Volume II

CONSOLIDATED APPENDIX—PART C

In The

# Supreme Court of the United States

October Term, 1969

No. [redacted] 78

Atlantic City Electric Company, et al.,

*Appellants*

*v.*

United States of America and Interstate Commerce Commission, et al.,

*Appellees*

On Appeal from the United States District Court for the Southern District of New York

Jurisdictional Statement Filed January 16, 1970

No. [redacted] 106

Alabama Power Company, et al.,

*Appellants*

*v.*

United States of America and Interstate Commerce Commission, et al.,

*Appellees*

On Appeal from the United States District Court for the District of Columbia

Jurisdictional Statement Filed March 5, 1970

Probable Jurisdiction in Both Cases Noted, and Cases Consolidated for Argument, May 18, 1970

# CONSOLIDATED APPENDIX

IN THE

# Supreme Court of the United States

October Term 1969

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** This Order was not included in the Record in either case. It is printed in the Appendix at the request of Appellees, Aberdeen & Rockfish Railroads, et al. by agreement of all parties.

## Chronological List of Relevant Docket Entries

| | |
|---|---|
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BEFORE THE

# INTERSTATE COMMERCE COMMISSION

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**Railroads' Petition for Orders Permitting the Filing of Increased Freight Rates and Charges and for the Relief Necessary to the Assessment of Such Charges**

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March 7, 1968


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Application is hereby made on behalf of the petitioners listed in Appendix A hereof, being substantially all of the Class I railroads of the United States and some railroads of other classifications, and on behalf of certain water and

motor carriers having joint rates with said railroads, for authority to depart from the Commission's tariff rules, and for such other relief as may be necessary to enable them to publish increases in freight rates and charges to and from points generally throughout the United States, and to and from points in Canada, by means of a master tariff, connecting link supplements and other necessary tariffs and supplements.

Application is also made for the modification of all outstanding orders of the Commission to the extent necessary, (1) to permit, initially, only the publication of the proposed increases in rates and charges, and (2) following the receipt and consideration of evidence in the form of verified statements, to permit the actual charging of the proposed increases upon a finding that the general level of rates as increased will be just and reasonable.

The special circumstances and conditions which justify the relief sought herein are as follows:

I.

In its final decision in *Ex Parte 256 Increased Freight Rates, 1967*, 332 I.C.C. 280 (February 6, 1968), the Commission referred to its previous findings that the 1950 and 1951 rates of return of the Class I railroads were "substandard and inadequate." These were 4.28 percent and 3.76 percent, respectively. The Commission then noted that interest rates have risen substantially since that time and that prime utility bonds and railroad equipment obligations are yielding interest of over 6 percent, and it found that "the inadequacy of the present rate of return of less than 4 percent is clear."

In sharp contrast to these conclusions is the fact that the rate of return for the Class I railroads in 1967 fell to

2.46 percent. This was the lowest rate of return experienced by the railroads of the nation in the entire post-World War II period, excepting only those for 1960 and 1961, years of severe economic dislocations. The rates of return for the railroads of the several districts in 1967 were: Eastern District, 1.60 percent; Southern District, 3.87 percent; and Western District, 2.76 percent.

II.

The net railway operating income of the Class I railroads fell from $1,045,900,000 in 1966 to $677,000,000 in 1967. The 1967 net railway operating income was lower than in any year since 1946, excepting the aforesaid years, 1960 and 1961.

Although the purchasing power of the dollar is substantially less today than it was in the immediate post-war period, net railway operating income in 1967 was lower than in any year of the decade beginning with 1947. It was over $100,000,000 more in 1947 than it was twenty years later in 1967. Yet the net investment in properties devoted to the transportation service was nearly $5 billion more in 1967 than in 1947.

Net railway operating income for the railroads of the several districts also showed marked declines in 1967 as compared with 1966. That for the Eastern District dropped from $385 million to $176 million; that for the Southern District from $183 million to $164 million; and that for the Western District from $478 million to $337 million.

III.

By its interim decision in *Ex Parte 256*, 329 I.C.C. 854 (July 31, 1967), the Commission approved increased rates

and charges which became effective on August 19, 1967. The Commission estimated that the increases authorized would produce additional gross revenues of approximately $298.6 million annually, or $29,000,000 less than the railroads had sought. In its final report in that case, the Commission stated that modifications required therein, involving some further increases and some reductions, would offset each other to a substantial extent. Had the increases finally approved been in effect for the full year 1967, net railway operating income would have been only $820,000,000 and the rate of return only 2.99 percent.

IV.

The foregoing dangerously low level of earnings must be considered against the fact that the railroads are experiencing large increases in wages, prices of railway materials and supplies, and other costs over and above those submitted by the railroads in *Ex Parte 256*. With relatively minor exceptions, those cost increases were not experienced in 1967. The increases include the following:

*Wage settlements effective in 1967 in excess of the 5% increase for which costs were submitted in Ex Parte 256:*

Additional 1% for engineers and conductors, 8-1-66.

Additional 1% for shoperafts and dispatchers, 1-1-67

Additional 6% for engineers working without firemen, 1-1-67

Increased car scales for conductors, 8-1-67

Increases of 5¢ per hour for journeymen and mechanics, 4-1-67 and 10-1-67

*Railroads' Petition*

*Wage rate increases in 1968, including potential increases on basis of indicated pattern:*

1-1-68 increases of 2.5% for trainmen, firemen and all nonops except shoperafts and train dispatchers, and 4.3% for dispatchers

7-1-68 increases of 3.5% for trainmen, firemen and all nonops except shoperafts and train dispatchers

7-1-68 increases of 5.0% for shoperafts, engineers and conductors

7-1-68 payment of 5¢ per hour for clerks' special fund

4-1-68 and 10-1-68 increases of 5¢ per hour for journeymen and mechanics

*Other labor costs:*

Award of Arbitration Board 298, lodging, meals and travel pay allowances, 10-15-67

Increase of .25% in rate of payroll tax for retirement and medicare, 1-1-68

Increase in maximum taxable pay per month for retirement and medicare from $550 to $650, 1-1-68

Increase in cost of hospital, medical and life insurance, 3-1-68

---

Material price increase of approximately 3%

Depreciation expense increase, 1968 over 1967

V.

These cost increases will approximate a gross annual figure of a half billion dollars. They cannot be met by further reduction in employment resulting from additional

capital expenditures, or otherwise. The imposition of these drastically higher wage rates and price levels upon earnings which are already dangerously low would bring railroad rates of return and net railway operating income to perilously low levels.

VI.

In its February 6, 1968 decision in *Ex Parte 256*, the Commission referred (p. 289) to a leading annual statistical publication comparing industries on the basis of their return on net worth, wherein, for 1966, the railroads "ranked 72d from the top in a list of 73." It then noted the railroads' reliance on continued advances in efficiency to satisfy in part their increased revenue needs. It observed that such efficiencies can be realized only by the expenditure of large amounts of money for capital improvements, that "the need for large capital expenditures for additions and betterments to rolling stock and for modernized facilities will not abate in the foreseeable future ..." (289), and it concluded (290) that "to the significant extent that money must be borrowed to finance such improvements in the future, it is plain that the credit position of the railroads must be sustained by an adequate and realistic level of earnings."

Without the increases in freight rates and charges now sought to be published, the railroads' earnings would be seriously inadequate to finance needed improvements and they would be insufficient for the maintenance of adequate, economical and efficient service and for the preservation of a national transportation system adequate to meet the needs of the commerce of the United States, of the postal

service, and of the national defense, contrary to the objectives of the National Transportation Policy.

VII.

The increases in freight rates and charges which the railroads seek to publish have been carefully considered by their Traffic Officers from the standpoint of their possible effect on the movement of traffic. They have reached the conclusion that the increases would have no substantial effect on the movement of the traffic, and the railroads' verified statements to be submitted in support of their application will substantiate that conclusion.

VIII.

The general level of the increased rates and charges will be just and reasonable.

The rates, as increased, will be immune from the doctrine of *Arizona Grocery Co.* v. *Atchison T. & S. F. Ry. Co.*, 284 U.S. 370. They will also be subject to a refund provision for application to any rate permitted to become effective without suspension and later found unreasonable after such further investigation as the Commission may deem to be required. This is a protection which is in addition to the remedies provided by the Act, to all of which the increased rates and charges would be subject.

IX.

It would be wholly impracticable to publish the proposed increases in rates and charges by the filing of the thousands of tariffs and tariff supplements which would be required in the absence of relief from the Commission's tariff publishing rules and, therefore, it is necessary, as

a practical matter, to publish such increases in the manner proposed.

X.

Applicants are confronted with an emergency which requires that the relief here sought be granted at the earliest practicable date.

XI.

Applicants' proposal has already been given widespread publicity in transportation journals and otherwise. Their proposed tariff would be mailed, on or about March 11, 1968, to all who were parties to *Ex Parte No. 256*. Copies thereof will also be furnished to any other person who makes request therefor, and will be lodged in the Regional Offices of the Interstate Commerce Commission.

WHEREFORE, Applicants pray that the Commission

(1) grant authority to depart from the Commission's tariff rules to the extent necessary to enable the railroads to publish the proposed increases in freight rates and charges by means of a master tariff, connecting link supplements, and other necessary tariffs or supplements,

(2) modify all outstanding orders to the extent necessary to permit, initially, only the publication of the aforesaid increases in rates and charges; this preliminary and partial modification of outstanding orders is a purely technical step required to permit of the publication of the proposed increases in tariff form,

(3) fix a schedule for the receipt of verified statements by those in favor of the proposed increases and by

any who may be in opposition thereto, and otherwise provide for the procedure to be followed in considering the proposed increases in rates and charges, and

(4) following the receipt of evidence in the form of verified statements, to enter an order modifying all outstanding orders so as to allow the assessment of the proposed increased rates and charges, and enter such further orders granting new and modified Fourth Section Relief and all other relief that may be necessary to permit the proposed tariffs to become effective without suspension.

Respectfully submitted,

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---

(Appendix A omitted. For a list of Class I Railroads, see Exhibit A to the Railroads' Motion to Intervene, in Part A at p. 13a, *supra*.)

## I.C.C. Special Permission Order No. 68-4000

At a General Session of the INTERSTATE COMMERCE COMMISSION held at its office in Washington, D. C., this 8th day of March, 1968.

Upon consideration of a petition filed by Edward A. Kaier, and other attorneys, dated March 7, 1968, for and on behalf of substantially all Class I Railroads of the United States, and some Railroads of other classifications, and on behalf of certain water and motor carriers having joint rates with said railroads, for authority to depart from the Commission's tariff-publishing rules to the extent necesary to enable such carriers to publish general increases in varying amounts in freight rates and charges by means of a master tariff and other short-form methods, and for modification of all outstanding orders of the Commission to the extent necessary to permit only the publication of the aforesaid increases in rates and charges;

For good cause shown it is ordered:

1. Carriers for and on whose behalf the above-mentioned petition was filed, and their tariff-publishing agents, be, and they are hereby, authorized to depart from the Commission's tariff-publishing rules when posting and filing tariffs to become effective on not less than seventy-five days' notice to the Commission and to the public but not earlier than May 27, 1968, providing for increased rates and charges set forth above in the following manner:

(a) By publication and filing of a master tariff of increased rates and charges, which shall contain a provision reading substantially as follows:

"In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commis-

sion, the carriers will refund the difference between the increases resulting from the application of this tariff and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission."

"In the event an increase resulting from the application of this tariff is disapproved by the Commission and no increases is authorized, the carriers will refund the full amount of the increase collected."

(b) By publication and filing of connecting-link supplements to one or more tariffs connecting such a tariff or tariffs with the master tariff of increased rates and charges.

(c) By publication and filing of tariffs or supplements of specific increased rates and charges, subject to the same provision concerning refunds as contained in paragraph 1(a), and

(d) By publication of provisions in tariffs or supplements subjecting the rates and charges therein to the provisions of the master tariff.

2.(1) Master tariffs, supplements thereto, and supplements to tariffs which are issued in short-form method shall bear notation reading substantially as follows:

The form of this publication is permitted by authority of Interstate Commerce Commission Permission No. 68-4000 of March 8, 1968.

(2) Other tariffs or supplements containing specific increased rates or charges shall bear notation reading:

This publication is issued under authority of Interstate Commerce Commission Permission No. 68-4000 of March 8, 1968.

3. Connecting-link supplements authorized herein shall be exempt from the Commission's tariff-publishing rules relating to the number of supplements and volume of supplemental matter permitted. This and all other relief from the Commission's tariff-publishing rules authorized herein shall expire with March 8, 1969.

4. Outstanding orders of the Commission are modified only to the extent necessary to permit the filing of tariffs containing the proposed increased rates and charges, and all tariffs filed shall be subject to protest, suspension, or rejection.

*And it is further ordered*, That notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D. C., and by filing it with the Director, Office of the Federal Register.

By the Commission.

H. NEIL GARSON
*Secretary*

(SEAL)

## I.C.C. Order of Suspension

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of June, 1968.

Ex Parte No. 259

Increased Freight Rates, 1968

*It appearing*, That on March 11, 1968, substantially all of the Class I railroads and many other carriers filed schedules of increased freight rates and charges under authority of Section 6 of the Interstate Commerce Act and Special Permission Order No. 68-4000 issued by the Commission, said tariff schedules to become effective June 21, 1968, subject to possible investigation and suspension by the Commission as provided by the Act;

*It further appearing*, That on March 7, 1968, the above railroads together with certain water and motor carriers filed a petition requesting the issuance of orders granting relief from outstanding orders entered by the Commission in previous cases, for relief from Section 4 of the Act, and for all other relief necessary to permit the aforesaid schedules to go into effect without suspension but subject to the condition that refund be made in the event that, after full investigation, no increase or a lesser increase than that set forth in the schedules is allowed with respect to particular rates; and also asking that after complete investigation the Commission grant all final relief necessary to the charging of the aforesaid increased rates and charges;

*It further appearing*, That by order of the Commission herein dated March 12, 1968, the above railroads were ordered to file and serve on or before March 25, 1968 statements in support of their petition and in justification of the proposed tariffs;

*I.C.C. Order of Suspension*

*It further appearing,* That the Commission's order of March 12, 1968, as amended, provided that any party in opposition to the railroad's petition could file statements on or before May 20, 1968, and be heard in oral argument before the Commission beginning on June 13, 1968;

*And it further appearing,* That the Commission having considered the views of the parties in verified statements, protests, replies, briefs, and oral argument, therefore;

*It is ordered,* That the operation of the following schedules be, and it is hereby, suspended, and that the use thereof on interstate and foreign commerce be deferred to and including January 23, 1969, unless otherwise ordered by this Commission:

> TARIFF OF INCREASED RATES AND CHARGES, X-259, issued jointly by Western Trunk Line Committee, Agent, its I.C.C. No. A-4696, and other designated agents:
>
> Tariff X-259 and SUPPLEMENTS NOS. 1, 2, and 3 thereto;

*It is further ordered,* That the carriers parties to this proceeding be, and they are hereby, authorized to establish upon not less than one day's notice to the Commission and the public by filing and posting in the manner prescribed in the Interstate Commerce Act an increase not to exceed 3 percent (except for disposition of fractions) subject to maximums no higher than specified in the suspended tariff of increased rates and charges, X-259, and in no event to produce a greater revenue in connection with any rate or charge on any particular commodity or service than proposed in X-259;

*It is further ordered,* That an investigation be, and it is hereby instituted into and concerning the lawfulness of

all the rates, charges, and regulations which were contained in the suspended schedules, as aforesaid, as well as the schedule herein authorized to be filed, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant, all the said schedules to be subject to a refund provision the same as set forth in the aforesaid tariff of increased rates and charges, X-259;

*And it is further ordered,* That all outstanding orders of the Commission be, and they are hereby modified to permit the increases authorized herein to become effective.

FOURTH SECTION ORDER NO. 20213

*It appearing,* That carriers parties to the proceeding applied for relief from the provisions of Section 4 necessary to establish the rates and charges originally sought; and that the increases in rates and charges authorized herein cannot be published and made effective without producing in some instances rates or charges that yield greater compensation in the aggregate for the transportation of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, or greater compensation as a through rate or charge than the aggregate of intermediate rates or charges subject to the act, in contravention of Section 4 thereof;

*It is ordered,* That carriers subject to the Interstate Commerce Act and parties to said proceeding be, and they are hereby, authorized to establish and maintain the increased rates and charges described herein without observing the provisions of Section 4 of the act;

*It is further ordered,* That parties to said proceeding be, and they are hereby, authorized to establish and maintain

rates and charges permitted to become effective in this order without observing the long-and-short-haul provision of Section 4 of the act in cases arising out of the failure to apply the full increases in rates and charges over interstate routes between points in a single State, in turn caused by the failure of the State authorities to authorize the full increases permitted in this proceeding;

*And it is further ordered,* That in those instances in which rates in contravention of Section 4 are established under authority contained herein, the schedule containing such rates shall make reference to this order in the manner required by Rule 28 of Tariff Circular No. 20.

AMENDMENT TO SPECIAL PERMISSION No. 68-4000 AUTHORIZING CERTAIN DEPARTURES FROM THE COMMISSION'S PUBLISHED TARIFF REGULATIONS

*It is ordered,* That Special Permission No. 68-4000 be, and it is hereby, amended to permit the establishment of the increases in freight rates and charges authorized by the Commission in this order, subject to the terms, conditions and limitations provided therein.

By the Commission.

H. NEIL GARSON,
Secretary.

(SEAL)

## I.C.C. Order Dividing Case into Sub-Proceedings

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C. on the 3rd day of July, A. D. 1968.

EX PARTE NO. 259

INCREASED FREIGHT RATES, 1968[1]

*It appearing,* That by order dated June 19, 1968, the Commission suspended the operation of schedules of increased rates and charges, Tariff No. X-259, and instituted an investigation into and concerning the lawfulness of all increases in rates and charges, and regulations contained in the schedules referred to therein, including the schedules therein authorized to be filed;

*It is ordered,* That, for the purpose of receiving evidence and argument with respect thereto, the Commission has assigned the following sub-numbers to the schedules and issues involved herein:

Sub-No. 2—Railroad cost and revenue need

Sub-No. 3—Coal

Tariff Item Nos. 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100

Sub-No. 4—Iron and steel scrap—pig iron—iron ore

Tariff Item Nos. 845, 1060

Sub-No. 5—Grain—sugar beets & cane—sugar—molasses—flour—coffee—bakery products

Tariff Item Nos. 515, 520, 525, 560, 570, 580, 675, 680

Sub-No. 6—Accessorial charges—line haul—minimum charges—absorption—transit

Tariff Item Nos. 100, 110, 115, 130, 150, 155, 160, 165, 170, 180

1. The order embraces Ex Parte No. 259, Increased Freight Rates, 1968, Sub-number 2 through Sub-number 11.

*I.C.C. Order Dividing Case Into Sub-Proceedings*

Sub-No. 7 — Woodpulp — pulpwood — textile and paper waste — paper — lumber — cotton — textiles apparel—synthetic fibers—wool

Tariff Item Nos. 500, 505, 510, 690, 695, 700, 705, 710, 715, 720, 725, 900, 925, 970

Sub-No. 8—Farm products—fruits—nuts—meat—canned goods—dairy products—poultry & eggs—starch—tapioca—tallow—liquor—tobacco—hides

Tariff Item Nos. 530, 535, 540, 545, 550, 555, 565, 575, 585, 590, 595, 600, 685, 910, 915, 920, 935, 940

Sub-No. 9 — Fertilizer — aggregates — limestone — sand — asphalt — potash — shells — cement — brick — clay — lime — chemicals — gases — petroleum products—acids—pulp mill by-products—paint—drugs—soap—latex—tires

Tariff Item Nos. 605, 610, 625, 630, 635, 640, 645, 655, 660, 730, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 830, 835, 950, 975, 980, 985, 990, 1020 (Shells)

Sub-No. 10—Miscellaneous ores—metal products—batteries— non-ferrous scrap—salt—radio-active materials—sulphur—phosphates

Tariff Item Nos. 615, 620, 650, 665, 670, 735, 840, 865, 1000

Sub-No. 11—Metal castings—iron and steel products — pipe — machinery — household appliances — vehicles—instruments and parts—furniture—fixtures—tiles—miscellaneous manufactured items—guns—ammunition—glass—abrasives—marine products—etc.

Tariff Item Nos. 850, 855, 860, 870, 875, 880, 885, 890, 895, 905, 930, 945, 955, 960, 965, 995, 1005, 1010, 1015, 1020 (except shells), 1025, 1030, 1035, 1040, 1045, 1050, 1055

*It is further ordered,* That the Special Rules of Practice and Procedure hereinafter set forth shall apply:

(a) verified statements and reply verified statements heretofore filed in this proceeding pursuant to the provisions of sub-paragraphs (a) and (b) of the second ordering paragraph of the order of March 12, 1968 need not be resubmitted, but any party desiring to have his statement made part of the record must notify the Commission and opposing parties, as described in sub-paragraphs (c) and (d) herein, on or before the date hereinafter provided for the filing of additional verified statements, of the Sub-Numbers and commodities embraced therein under which he desires such statement to be considered. Such statements, as well as those set forth in sub-paragraph (b), will be subject to the right of other parties to object to all or any part thereof. If any verified statement submitted pursuant to this order contains cost or other studies, the party submitting such statement shall make available to any other party, upon request, all underlying data supporting such studies.

(b) verified statements in addition to those heretofore filed in this proceeding may be filed by any person. Each such statement shall be confined to a specific sub-numbered proceeding and the involved commodities which shall be designated on the cover or first page of such statement. All such statements shall be duly verified in the manner provided by Rule 1.50 and Form No. 6 of the General Rules of Practice.

(c) an original and 24 copies of additional verified statements in support of respondents shall be furnished to the Commission and a copy served upon each party which filed a protest, verified statement or brief in opposition in this proceeding. One additional copy shall be sent by first class mail to each of the regional offices of the Commission listed in the appendix hereto, where it will be open to public inspection. Copies of such statements shall

be furnished to any interested person upon request. Such statements must be filed on or before August 12, 1968 and shall include a certificate of service on opposing parties.

(d) an original and 24 copies of additional verified statements of persons in opposition to said schedules shall be furnished to the Commission. Service of 25 copies upon Mr. Edward A. Kaier, 1036 Transportation Building, Washington, D. C. shall constitute service upon all respondents. One copy of each additional verified statement shall be sent by first class mail to each of the regional offices of the Commission, where it will be open to public inspection. These statements must be filed on or before September 3, 1968 and shall contain a certificate of service on opposing parties. Copies shall be furnished to any interested party upon request addressed to the witness or his counsel.

(e) any party desiring to cross-examine witnesses for the respondents must give notice, in writing, of such demand to the witness and his counsel with copy to the Commission on or before August 23, 1968. Respondents must give similar notice of their desire to cross-examine witnesses for the protestants on or before September 9, 1968.

*It is further ordered*, That the hearings in:

(a) Ex Parte No. 259 (Sub-No. 2) INCREASED FREIGHT RATES, 1968, will commence on September 9, 1968 at 9:30 o'clock a.m. District of Columbia Daylight Saving Time at the offices of the Interstate Commerce Commission, Washington, D. C.

(b) Ex Parte No. 259 (Sub-No. 6) INCREASED FREIGHT RATES, 1968, Ex Parte No. 259 (Sub-No. 4) INCREASED FREIGHT RATES, 1968, and Ex Parte No. 259 (Sub-No. 3) INCREASED FREIGHT RATES, 1968, will

commence on September 16, 1968 at 9:30 o'clock a.m. District of Columbia Daylight Saving Time at the offices of the Interstate Commerce Commission, Washington, D. C.

(c) Ex Parte No. 259 (Sub-No. 5) INCREASED FREIGHT RATES, 1968, Ex Parte No. 259 (Sub-No. 7) INCREASED FREIGHT RATES, 1968, and Ex Parte No. 259 (Sub-No. 8) INCREASED FREIGHT RATES, 1968 will commence on September 25, 1968 at 9:30 o'clock a.m. District of Columbia Daylight Saving Time at the offices of the Interstate Commerce Commission, Washington, D. C.

(d) Ex Parte No. 259 (Sub-No. 9) INCREASED FREIGHT RATES, 1968, Ex Parte No. 259 (Sub-No. 10) INCREASED FREIGHT RATES, 1968 and Ex Parte No. 259 (Sub-No. 11) INCREASED FREIGHT RATES, 1968, will commence on October 7, 1968 at 9:30 o'clock a.m. District of Columbia Daylight Saving Time at the offices of the Interstate Commerce Commission, Washington, D. C.

*It is further ordered*, That this proceeding be, and it is hereby, referred to such hearing examiners as may be hereafter designated for hearing at the times and place set forth above and that this proceeding will not be the subject of an examiner's recommended report and order because due and timely execution of our functions requires an expedited decision.

Ex Parte No. 259 publication in the Federal Register as notice to interested parties.

By the Commission, Division 2.

H. NEIL GARSON,
Secretary.

(SEAL)

# INTERSTATE COMMERCE COMMISSION

## EX PARTE NO. 259

## INCREASED FREIGHT RATES, 1968

## INTERIM REPORT AND ORDER

[590]

## EX PARTE NO. 259

## INCREASED FREIGHT RATES, 1968

*Decided November 25, 1968*

1. After hearing and consideration of briefs, found that the Nation's railroads are in immediate need of increased freight revenue to offset rising operating costs.

2. As interim relief, order entered June 19, 1968, suspending tariff schedules, vacated in part.

3. Investigation of all proposed increases in rates and charges continued.

4. Appropriate order entered, including modification of our outstanding orders and fourth-section relief.

*Andrew C. Armstrong, Curtis H. Berg, John J. Burchell, Charles W. Burkett, Martin L. Cassell, Charles W. Chapman, J. T. Clark, Charles H. Clay, Monroe E. Clinton, John A. Daily, J. R. Davis, J. H. Doeringer, Paul R. Duke, Stuart F. Gassner, Edward R. Gustafson, John W. Hanifin, Louis A. Harris, W. P. Higgins, James L. Howe III, E. E. Hunt, Harvey Huston, Edward A. Kaier, W. A. Kimbrough, Jr., W. Bruce Kopper, A. W. Laisy, R. J. Lally, Ralph L. Lanigan, Harry B. LaTourette, Don McDevitt, John D. Morrison, Robert C. Morton, Richard J. Murphy, J. J. Nagle, Milton E. Nelson, Jr., W. J. O'Brien, Prime F. Osborn, C. Harold Peterson, C. A. Prior, John F. Reilly, Charles C. Rettberg, Jr., Albert B. Russ, Jr., R. J. Schreiber, Preston C. Shannon, R. D. Sickler, John F. Smith, J. M. Souby, Jr., R. H. Stahlheber, Richard H. Strodel, James L. Tapley, D. M. Tolmie, L. E. Torinus, Jr., W. G. Treanor, M. R. Warnock, J. C. Waterman, John E. Weiss,* and *Robert J. Williams* for respondents.

*Charles H. Gilbert, E. F. Heitz, William A. Imhof, James H. Lang, Charles M. Pearson, Leon Schill,* and *Ronald P. Vail* for the Secretary of Agriculture.

*Ralph L. Trisko* and *Pedro R. Vazquez* for the Department of Commerce.

*Dellon Coker* for the Department of Defense.

*Murray Chais* for the Atomic Energy Commission.

*Leonard M. Shinn* for General Services Administration, Department of Defense, and other government agencies.

[591] *Robert F. Lenzi* for General Services Administration.

*James M. Henderson* for the Departments of Agriculture of the States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, New Jersey, Delaware,

Maryland, Pennsylvania, and Virginia and other Virginia interests.

*Robert A. Lane* for the State of California and the California Public Utilities Commission.

*Hector Anninos, Robert A. Lane,* and *Mary Moran Pajalich* for the California Public Utilities Commission.

*John J. Finsness* for the Kansas State Corporation Commission, South Dakota Public Utilities Commission, North Dakota Public Service Commission, Montana Board of Railroad Commissioners, Minnesota Department of Public Service, Nebraska State Railway Commission, and the Wyoming Public Service Commission.

*Maynard C. Dolloff* and *Frank D. Reed* for the Maine Department of Agriculture.

*John L. Crothers, Jr.* for the Maryland State Board of Agriculture.

*Jerome E. Pederson* for the Minnesota Public Service Commission.

*C. Lowell Purdy* for the Montana Commissioner of Agriculture.

*Gordon E. Ganka* for the Nebraska State Railway Commission.

*Robert L. Christensen* for the New Hampshire Department of Agriculture.

*Phillip Alampi* for the New Jersey Department of Agriculture.

*Louis J. Lefkowitz, Walter J. Myskowski,* and *Dunton F. Tyman* for the State of New York.

*D. M. Dalrymple* for the New York State Department of Agriculture and Markets.

*John M. Agrey* for the North Dakota Public Service Commission.

*Charles O. Ham, Jr.* for the State of Oklahoma Corporation Commission.

*Thomas W. Dench, Sam R. Haley,* and *James E. Singleton* for the Public Utility Commissioner of Oregon.

*Leland H. Bull* for the Pennsylvania Department of Agriculture.

*Eugene P. Springer* for the South Dakota Public Utilities Commission.

*Maurice B. Rowe* for the Virginia Department of Agriculture and Commerce.

*Arthur W. Jacocks* for the Virginia State Ports Authority.

*William R. Brumfield* and *Harold C. Heublein* for the Wisconsin Public Service Commission.

*Karl E. Bakke, Michael Bradfield, Walter Hollis, George D. Krumbhaar, Jr., W. Patrick Morris, John B. Rehm, Fred B. Smith, Pedro* [592] *R. Vazquez, Edward Weinberg, John Geoffrey Will,* and *Bruce Wright* for the Federal Interagency Committee on Coal Exports.

*William B. Adams, Stanley W. Akers, V. Alexander, W. P. Allen, Jr., Eugene D. Anderson, Gordon R. Anderson, William C. Andrews, John J. Archer, Arthur A. Arsham, Robert C. Bachelder, William L. Bailes, Jr., Robert L. Banks, Howard J. Benson, Klaus Bergman, James E. Bilbo, Jacob P. Billig, Douglas W. Binns, Richard B. Blackwell, Calvin L. Blaine, Chas. E. Blaine, Robert A. Blocki, R. F. Bohman, Sr., George H. Borts, Harold A. Bowron, Jr., J. Robert Bray, Edward K. Brenner, Jerry H. Brenner, Charles A. Brock, Charles T. Brookman, Frank C. Brooks, Carman E. Brown, Charles L. Bucy, Robert S. Burk, John H. Caldwell, Donald J. Carlson, William L. Carter, Bernard B. Caruso, Richard A. Chrz,*

*J. Raymond Clark, John M. Cleary, M. J. Cloughesy, Garth Coffin, Albert Cohen, Clyde Comstock, C. D. Coppinger, D. H. Core, Jr., Leon Coslov, Richard E. Costello, Leslie M. Cox, Richard Crabtree, Fred S. Crittenden, D. P. Cromwell, Norman L. Cummins, F. P. Daleiden, Wilma M. Dalton, A. P. Davis, Jr., M. J. Davis, J. Douglas Dawson, William D. Day, Samuel P. Delisi, Edward J. Dempsey, Ray B. Dewey, James A. Diehl, Norman E. Dietrich, C. R. Dollinger, Sr., John Dollinger, Jr., John F. Donelan, Fred C. Dontel, James L. Downs, George B. Dutton, Jr., Samuel W. Earnshaw, Milton K. Eckert, Harry Eggert, Scott H. Elder, Vernon L. Everngam, Ernest Falk, Glen L. Fast, Gerald W. Fauth, Jr., W. E. Fincher, A. William Finke, R. C. Flesch, Robert H. Foltz, Charles F. Forgue, Max G. Fortune, Max E. Foster, Edward B. Frankel, Samuel R. Freeman, Alfred E. Froh, Richard W. Gaudern, F. E. George, John W. Gibius, Kenneth L. Gillis, Irving R. Glass, Richard Gordon, Robert H. Gorske, Howard Gould, J. L. Guthrie, George F. Hall, G. Robert Hallett, Jr., Roy Hancock, T. Vernon Hansen, Richard J. Hardy, Robert E. Harridge, Richard Harrington, Louis B. Hartlage, Leo P. Hearn, George A. Heitz, R. J. Helm, James M. Henderson, Joseph W. Hepburn, Raymond M. Hilbert, Walter Hoffman, Brian Holtz, John L. Hopkins III, O. Denton Hudson, Bernard Hulkower, John Hummel, Joseph A. Illes, James J. Irlandi, James M. Jones, Jr., N. J. Jordan, S. Harrison Kahn, R. E. Kanauss, William Q. Keenan, Leo J. Kelleher, Jr., Charles A. Kelly, Daniel J. Kennedy, John A. Kennedy, Jr., John J. Kerr, Robert Kharasch, L. O. Kimberly, Jr., Fred M. Kimbrough, Wade Kimsey, Edward S. Kirby, T. B. Kircher, Alan M. Kirk, Robert M. Koch, Dwight L. Koerber, David A. Kosh,*

*I.C.C.'s Interim Decision*

*James S. Laird, John F. Lane, Carl J. Lessing, Robert Levin, Arnold Levy, William M. Lewis, Jr., Robert C. Liebenow,* [593] *Eugene T. Liipfert, William J. Lippman, Dickson R. Loos, Frank Loughran, Gordon P. MacDougall, William M. Maddox, Nate Magid, L. D. Mangan, Edwin E. Marsh, Sheila H. Marshall, Lauman Martin, Phillip A. Martin, C. L. Mayfield, Charles J. McCarthy, Don McDevitt, Graham W. McGowan, Thomas F. McGrath, C. McIntosh, Kathleen C. McManus, R. W. Meckfessel, Charles M. Meehan, Henry P. Megargee, Jr., Joseph M. Michaels, G. G. Miller, John L. Miller, Reeder C. Miller, S. H. Moerman, Marvin H. Morse, James F. Mulligan, John C. Mundt, George H. Nafziger, Alfred J. Navaroli, Robert M. Neary, Wesley C. Newman, J. H. Norton, Allen J. O'Brien, Lawrence J. O'Connor, C. V. O'Hern, Jr., James J. O'Malley, Jr., Samuel Omasta, Richard G. Olson, D. J. Osbjornson, L. A. Parish, John T. Parkinson, Gilbert J. Parr, J. D. Patterson, Leroy E. Peabody, Jr., Richard H. Pennell, Robert R. Pester, John S. Peters, John W. Peterson, Leonard E. Peterson, M. G. Peterson, E. H. Pierson, Harold M. Pockrose, Frank E. Polom, K. M. Potter, Roy B. Powell, M. T. Power, Harry D. Pugsley, Francis P. Pusateri, T. A. Quintrell, Clarence R. Reed, Lawrence A. Reedquist, Joseph V. Regan, David Reichert, Arthur M. Ribe, Charles H. Rice, Jack E. Richert, E. V. Robinson, Jr., Alfred A. Rochester, O. H. Roehling, Allan A. Rubin, James A. Ruffalo, Henri F. Rush, Jr., Charles Rust, William A. Ryan, John R. Scanlan, L. Schaffel, Robert M. Scott, Durward Seals, Herbert W. Sears, S. L. Seftenberg, Ashley Sellers, John L. Shissler, Jr., F. L. Sigloh, Jerome H. Simonds, Clarence E. Sims, Charles W. Singer, William L. Slover, Charles F. Smith, Darrell H. Smith, Jr., E. R.*

*Smith, Milton H. Smith, William K. Smith, William U. Smith, Wilson W. Snyder, William P. Spencer, John C. Spychalski, Charles W. Stadell, John R. Steutevjlle, Oliver L. Stewart, Tyrus C. Stewart, Nelson A. Stitt, T. M. Storer, William S. Story, Martin F. Strate, Elmer F. Streib, Charles O. Strickler, W. J. Sullivan, Daniel J. Sweeney, J. L. Tompkins, William H. Towle, Matthew L. Triggs, Thomas H. Truitt, Benjamin Trumbull, Jack R. Turney, Jr., Harry P. Vaughan, Clinton H. Vesselius, C. H. Wager, H. F. Wagner, Van B. Wake, J. F. Wallace, John A. Ward, Richard G. Warren, C. C. Warwick, Paul P. Watkins, M. R. Watson, Everett A. Weathers, E. Jerome Webster, Jr., Ben Weiner, George B. Weir, M. W. Wells, M. W. Wells, Jr., Robert R. Wertz, J. S. White, Jr., Henry M. Wick, Jr., Harter W. Williams, Arthur L. Winn, Jr., Louis H. Winnard, George Thomas Wright, Joseph W. H. Wright,* and *Charles H. Wulff* for protestants.

[594] INTERIM REPORT OF THE COMMISSION

By the Commission:

This proceeding concerns comprehensive increases in freight rates and charges proposed by the railroads to offset rising operating costs. The last permanent general increase was permitted in Ex Parte No. 256, *Increased Freight Rates, 1967,* 329 I.C.C. 854; 332 I.C.C. 280. On March 7, 1968, approximately 1 month after the final report in that proceeding was issued, substantially all of the class I railroads of the United States and some railroads of other classifications, for themselves and on behalf of certain water and motor carriers, filed a petition for authority to depart from the rules governing tariff publication to permit the proposed increases to be published and filed in

a short form, which was granted. The petitioners also sought modification of outstanding rate orders, authority to depart from section 4 of the Interstate Commerce Act, and all other relief that might be necessary to permit the proposed increases to become effective without suspension.

*Increased rate proposal.*—On March 11, 1968, the railroads filed their master increase tariff, X-259, containing the schedules of proposed increases in freight rates and charges.[1] Originally published to become effective on May 27, 1968, this date was subsequently voluntarily postponed to June 24, 1968. The proposed increases range generally from 3 to 10 percent and for the most part they are 6 percent or less. As in prior proceedings, a special refund provision is included which will have application in situations where no increase or something less than the full increase proposed is authorized in this proceeding.

*Proceedings through June 19, 1968.*—Pursuant to the special rules of procedure set forth in our order of March 12, 1968, verified statements (affidavits) were submitted by the railroads in support of the proposed increases, and by protestants in opposition thereto; and opposition was also registered by protests filed in accordance with our General Rules of Practice. At that stage the principal question was whether the increase tariff schedules should be suspended, in whole or in part, pending an investigation into their lawfulness. Briefs directed to this issue were filed by the parties; and on June 13-14, 1968, we heard oral argument.

[595] Since the petitioners intend to make like increases in their rates and charges on intrastate traffic,

1. Most of the increases being considered herein are set forth in the master tariff X-259, as amended; however, some of the provisions, such as restrictions on the application of the master tariff, are contained in agency or individual carriers' rate tariffs.

we notified the several States of the pendency of the proceeding; and, pursuant to section 13(3) of the act, representatives of four State commissions, the Honorable Ralph H. Wickberg of Idaho, the Honorable Charles J. Fain of Missouri, the Honorable Vernon B. Derrickson of Delaware, and the Honorable Edward L. Mason of Florida, sat with us throughout the oral argument. We have had the benefit of their counsel, both at that time and in connection with the conclusions reached herein.

Upon careful consideration of the matters presented by the parties, we concluded to suspend the proposed increases to the extent that they exceeded 3 percent. By order entered June 19, 1968, the proposed increases were suspended until January 24, 1969; but the respondents were permitted, on not less than 1 day's notice, to increase their rates not to exceed 3 percent (except for the disposition of fractions) subject to maximums no higher than those suspended and in no event to produce a greater revenue than that proposed in the X-259 tariff. The order also instituted an investigation of the proposed and the permissive increases. The respondents then filed a master increase tariff, "X-259-A," establishing the increases authorized in the order of June 19, 1968, which tariff became effective June 24, 1968.

*Investigation proceedings.*—The investigation was conducted under the special rules of procedure set forth in our order entered July 3, 1968. For the purpose of receiving evidence and argument with respect thereto we assigned the following sub-numbers to the tariff schedules and issues involved herein:

Sub-No. 2, railroad cost and revenue need;

Sub-No. 3, coal, tariff items 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100;

Sub-No. 4, iron and steel scrap, pig iron, iron ore, tariff items 845, 1060;

Sub-No. 5, grain, sugar beets and cane, sugar, molasses, flour, coffee, bakery products, tariff items 515, 520, 525, 560, 570, 580, 675, 680;

Sub-No. 6, accessorial charges, line haul, minimum charges, absorption, transit, tariff items 100, 110, 115, 130, 150, 155, 160, 165, 170, 180;

Sub-No. 7, wood pulp, pulpwood, textile and paper waste, paper, lumber, cotton, textiles, apparel, synthetic fibers, wool, tariff items 500, 505, 510, 690, 695, 700, 705, 710, 715, 720, 725, 900, 925, 970.

Sub-No. 8, farm products, fruits, nuts, meat, canned goods, dairy products, poultry and eggs, starch tapioca, tallow, liquor, tobacco, hides, tariff items 530, 535, 540, 545, 550, 555, 565, 575, 585, 590, 595, 600, 685, 910, 915, 920, 935, 940;

Sub-No. 9, fertilizer, aggregates, limestone, sand, asphalt, potash, shells, cement, brick, clay, lime, chemicals, gases, petroleum products, acids, pulp [596] mill byproducts, paint, drugs, soap, latex, tires, tariff items 605, 610, 625, 630, 635 640, 645, 655, 660, 730, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 830, 835, 950, 975, 980, 985, 990, 1020 (shells);

Sub-No. 10, miscellaneous ores, metal products, batteries, nonferrous scrap, salt, radioactive materials, sulphur, phosphates, tariff items 615, 620, 650, 665, 670, 735, 840, 865, 1000; and

Sub-No. 11, metal castings, iron and steel products, pipe, machinery, household appliances, vehicles, instruments and parts, furniture, fixtures, tiles, miscellaneous manufactured items, guns, ammunition, glass, abrasives, marine products,

et cetera; tariff items 850, 855, 860, 870, 875, 880, 885, 890, 895, 905, 930, 945, 955, 960, 965, 995, 1005, 1010, 1015, 1020 (except shells), 1025, 1030, 1035, 1040, 1045, 1050, 1055.

Four hearing examiners were assigned to conduct hearings which were held in Washington, D. C., starting September 9, 1968, and concluding October 8, 1968. The hearings were devoted mainly to cross-examination of respondents' witnesses and the introduction of some rebuttal evidence. Briefs directed to respondents' cost and revenue need and to the lawfulness of the tariff schedules under investigation were filed on or before November 12, 1968. As stated in our order of July 3, 1968, and as contemplated in section 15(7) of the act, this proceeding will not be the subject of an examiner's report and recommended order because due and timely execution of our functions requires an expedited decision. In this interim report we shall deal primarily, but not exclusively, with respondents' cost and revenue needs, which were the subject of the Sub-No. 2 hearing.

*Petition to vacate suspension.*—The Sub-No. 2 hearing started September 9, 1968, and concluded September 25, 1968. On the following day, by appropriate petition, respondents requested that we vacate our order of June 19, 1968, insofar as it suspended the proposed increase schedules, and that we permit those increases to become effective without further delay, but subject to the aforementioned refund provision. Numerous protestants, in replies to that petition filed on or before October 16, 1968, urged that it be denied. Several of them, referring to the general brief date of November 12, 1968, asked that action on the petition be deferred, in any event, until we have had opportunity to study the briefs and the record in the

complete proceeding; and this we have done. Our conclusion herein, that respondents are in need of immediate relief, is based upon the entire record, including the evidence and briefs of the parties as well as the described petition and the replies thereto.

[597] *Preliminary rulings.*—One of the above-mentioned replies, filed by the Coal Exporters Association of the United States, Inc., also contained a prayer for affirmative relief, in the form of a motion to cancel the interim X-259-A increase of 3 percent on coal destined for export as authorized by our order of June 19, 1968, and seeking also an order for refund of charges arising pursuant to that increase. Rule 101(e) of the Commission's General Rules of Practice (49 CFR 1100.101(e)) provides that a petition seeking any change in an order of the Commission must be filed within 30 days after the date of service of the order except for good cause shown and upon leave granted. The motion referred to, which was refiled October 21, 1968, does not comply with the rule and may not be considered.

Several protestants renew on brief their objections to certain rulings of the examiner near the close of the Sub-No. 2 hearing, in regard to a pamphlet published by Hayden, Stone Incorporated, members of the New York Stock Exchange, entitled "Railroad Industry Review 1968," dated August 27, 1968. Although not disclosed of record, the review was apparently prepared for Hayden, Stone by or under the direction of two financial analysts, Pierre R. Bretey and Karl Ziebarth. The examiner refused to have the pamphlet marked for identification or to receive it in evidence as a rebuttal exhibit of counsel. The examiner further refused to issue a subpoena to compel

Mr. Bretey to appear and testify. Over the objection of respondents, the examiner allowed protestants to make an offer of proof as to the testimony they expected to adduce through Mr. Bretey. Referring to the pamphlet, protestants' counsel stated:

> This represents the information which is going out to the purchasers of railroad stock. I think this exhibit—or this document is entitled to be admitted simply as showing the attitude of the financial community toward railroad stocks. It has a bearing on whether railroad stocks are or are not accepted by the financial community.

Nowhere is it asserted that Mr. Bretey and his co-author are themselves investors, as distinguished from analysts and advisors to investors. Nor do we have any assurance that Mr. Bretey was the author of the portions of the pamphlet sought to be introduced. Arguing for the admissibility of such "rebuttal evidence," counsel for protestants referred to an explanatory letter sent by the Chairman on August 15, 1968, to all parties of record, and specifically to the following sentence:

> [598] Nor do the proceedings prohibit the presentation of rebuttal evidence by any party under circumstances where in the judgment of the presiding examiner such evidence is appropriate and in rebuttal of new matter.

We have examined the transcript of the proceedings in this connection and find no error in the rulings of the examiner. We concur in his judgment that the proffered evidence was not "appropriate and in rebuttal of new matter." We note that some of the protestants' briefs and replies to respondents' petition to vacate the suspension contain extended

quotations from and numerous references to the pamphlet in question as if the factual assertions therein were competently established of record. These quotations and references are not entitled to consideration and they are stricken.

*Increased operating costs.*—In our reports in Ex Parte No. 256, *supra*, we reviewed the wage settlements and other cost increases experienced by the railroads since the previous general freight rate increase authorized in Ex Parte No. 223, *Increased Freight Rates*, 1960, 311 I.C.C. 373. As explained in our final report in Ex Parte No. 256, the cost totals alone are not meaningful except in relation to the volume of transportation performed. Accordingly, respondents in this proceeding have computed their unit operating costs by years, starting with 1961; and these are shown, together with comparable revenue data in appendix A hereto. We have checked these data and find them substantially accurate. Gross ton-miles reflect the total number of units of transportation produced and are therefore the most appropriate comprehensive measure of output for this purpose. Total operating expenses (including rents and taxes other than Federal income taxes) per 1,000 gross ton-miles actually decreased from $5.95 in 1961 to $5.58 in 1966, and then turned upward to $5.85 in 1967, as estimated $5.96 in 1968, and $6.05 for the constructive year. The unit-cost level for the constructive year is 8.42 percent above that for 1966. Respondents' constructive year projections are based on their estimated 1968 level of traffic demand (744,203 million revenue ton-miles and 12,792 million revenue passenger-miles) and second-half 1968 wage rates, material prices, and other cost factors in effect for a full 12 months.

Current wage increases, above those submitted by respondents in Ex Parte No. 256, but effective in 1967, include an additional 1 percent for engineers, conductors, shoperafts and train dispatchers; an additional 6 percent for engineers working without [599] firemen; increased car scales for road conductors; and 10 cents per hour for journeymen and mechanics. Further wage increases became effective in 1968, as follows: January 1, 4.3 percent for train dispatchers and 2.5 percent for other nonoperating employees, trainmen, and firemen; April 1, and October 1, 5 cents per hour each for journeymen and mechanics; July 1, 3.5 percent for trainmen, firemen, and all nonoperating employees except shoperafts, 5 percent for engineers, conductors, and shoperafts, and 5 cents per hour for a special fund for clerks. These wage adjustments with increases in fringe benefits and payroll taxes are estimated by respondents on an annualized basis, to aggregate $437.1 million. However, as shown in respondents' exhibits and explained by their principal witness, this total is not intended to represent the extent to which actual labor costs are expected to increase from 1 year to another. For such comparisons we are referred to respondents' condensed income accounts, in which the labor expenses are directly related to the employment level of each year and thus reflect the extent to which rising wage rates are offset by improved productivity.[2]

Respondents' income account tabulations for 1966, 1967, 1968 (partially estimated), and the constructive year (including the proposed increases) are reproduced in appendix B hereto. We have carefully checked these data and find them substantially accurate in all material re-

2. Compare Ex Parte No. 256, 332 I.C.C. 280, 283-288.

spects.[3] The estimates for 1968 and for the constructive year are expanded from returns to questionnaires submitted by accounting, traffic, and other officers of 25 "test carriers" representing approximately 84 percent of all class I railroads in the United States, based on operating revenues. These test carriers constitute, for this purpose, a representative group for the industry as a whole.

This evidence compels the conclusion that the entire adjustment proposed by respondents, if approved and made effective, would fall far short of meeting respondents' revenue need due to increased operating costs. For this purpose, 1966 is adopted as a base year and compared with the constructive year, which embraces all known changes of record. Use of 1966 as a base year is reasonable, and fair to shippers, because it reflects recent experience not complicated by a major rate revision, and the traffic volume is close to the current level. As shown in table 1, below, respondents' operating expenses, rents, and taxes [600] (excluding Federal income taxes) in 1966 totaled $9,422.6 million. Adjusted by territories, as shown in appendix C hereto, for the small differences in the traffic level of the constructive year, these base-year operating costs become $9,331.5 million. For the constructive year, the corresponding figure is $10,132.6 million, reflecting an increase in operating costs of $801.1 million. To this must be added $54.3 million, which represents the increase in respondents' fixed charges and contingent interest. Thus, their need for additional freight revenue, to be derived from both Ex Parte No. 256 and Ex Parte No. 259, to cover their increased expenses, is approximately $855.4 million.

3. Some relatively minor exceptions are discussed later in this report.

[601] TABLE 1

*Operating expenses, rents, taxes and fixed charges (excluding Federal income taxes)*

| | 1966 | Constructive Year | Increase | |
|---|---|---|---|---|
| | | *(millions)* | | |
| Operating expenses | $8,117.7 | $ 8,594.0 | | |
| Equipment and joint facility rents | 522.8 | 649.2 | | |
| Taxes | 968.4 | 1,025.0 | | |
| | 9,608.9 | 10,269.1 | | |
| Less Federal income taxes | 186.3 | 136.5 | | |
| Total operating expenses | 9,422.6 | | | |
| Adjusted for constructive year volume | 9,331.5 | 10,132.6 | $801.1 | 8.58% |
| Fixed charges and interest | 463.5 | 517.8 | 54.3 | |
| Total, expenses and charges | 9,795.0 | 10,650.4 | 855.4 | 8.73% |

[602] It will be noted that the increase of 8.58 percent shown in table 1 is consistent with and confirms the increase in the unit-cost level previously referred to. With the inclusion of fixed charges, which have risen more rapidly than the other expense items, the increase above the 1966 cost level is 8.73 percent.

The Ex Parte No. 256 rate increases, at the constructive year traffic level, should be generating approximately $300 million in increased freight revenue, which leaves $555.4 million in increased expenses to be met by the Ex Parte No. 259 increases its rates and charges. Respondents estimate that the 3-percent interim increase authorized by our order of June 19, 1968, will produce $265 million in annual

revenue and that, if all of their proposed increases become effective, they will produce some $200 million in additional revenue, or an aggregate of $466.2 million. Protestants' attack on this estimate is not that it is understated but that, because the rate increases tend to cause diversion of traffic, the total revenue generated will be somewhat less. Approval of the entire rate adjustment would thus leave respondents short by at least $89.2 million of annual revenue needed simply to cover their increased expenses.

In the foregoing discussion we have given no consideration to the claim that respondents' revenues from passenger, mail, express, and "all other" services will have declined since 1966 by about $300 million, nor to the time lag usually experienced in establishing like increases on intrastate freight traffic.[4]

*Conclusion as to immediate revenue need.*—We conclude that respondents are in immediate need of additional freight revenue to offset, in part, their increased operating expenses, including fixed charges and contingent interest, and that our order of June 19, 1968, insofar as it suspended the operation of the proposal increase schedules, except in the limited respects hereinafter discussed, should be vacated.

*Rate of return.*—Since, as already indicated, our present decision rests upon other grounds, we shall not dwell at length upon respondents' rate of return and net investment. However, in view of the attention devoted to these subjects in the briefs, we deem it appropriate to clarify the situation in certain respects.

In keeping with their practice in prior general revenue proceedings, respondents submitted an orthodox cost-of-

4. Cf. *Increased Freight Rates, E. and W. Territories, 1956*, 299 I.C.C. 429, 436.

capital study through a qualified expert witness, who concluded that, on respondents' net investment as determined by the Commission, a reasonable rate of return would be 9 or 9½ percent. It being apparent [603] that respondents could not possibly achieve such a rate of return at the level of rates here proposed, the presiding examiner inquired whether the recommended rate of return was not, for all practical purposes in this proceeding, an academic concept. The answer, quoted in part in one of the briefs, was as follows:

> Well, I would say it is with reference to your need for computing the total revenues that you think the railroads ought to have. In that sense it is. But it is not an academic concept for the purpose of comparing what the railroads are actually earning compared to what would be fair in making your determination whether any given set of rates is fair and reasonable.

The first part of the witness' answer comports with our observation in Ex Parte No. 206, *Increased Freight Rates, E., W., and S. Territories, 1956*, 300 I.C.C. 633, 662, "***that there is no statutory requirement or statement of policy requiring the making of rates to yield a certain rate of return on investment either in the United States as a whole, or in the various rate territories." In other words, as argued on brief by several protestants, rate of return is not a statutory standard. We agree.

The second part of the witness' answer relates to the zone of reasonableness. In the event that the revenue at a given rate level were to yield a rate of return in excess of 9½ percent, such a rate level, presumably, would not be just and reasonable to the public. The converse, however,

is not necessarily true; a rate of return of 9 percent or less does not automatically place the rate level in the zone of reasonableness; but a rate of return in the range of 4 percent or less, which we have repeatedly characterized as substandard, is at least an indication that the underlying rate level is within the zone of reasonableness.

As calculated by respondents on the same basis as in previous cases, their rates of return, by districts and for the United States, in recent years and for the constructive year (with the proposed increases), are as shown in table 2, below; and they are clearly inadequate.

TABLE 2

*Rates of return on net investment*

| | 1966 | 1967 | 1968* | Constructive year* |
|---|---|---|---|---|
| | | *(percent)* | | |
| Eastern District | 3.55 | 1.58 | 1.77 | 2.37 |
| Southern District | 4.45 | 3.86 | 3.65 | 4.36 |
| Western District | 4.03 | 2.75 | 2.93 | 3.35 |
| United States | 3.90 | 2.45 | 2.58 | 3.12 |

*Estimated

[604] Some criticism is leveled at the above rates of return because some railroads have included, in their charges against net railway operating income, Federal income taxes on income from non-railroad sources. In Ex Parte No. 206, *supra*, at 656, we said in regard to a similar contention:

> We agree with protestants that this sum should not be included in computing net railway operating income for purposes of determining a rate of return. However, the percentage relation which this amount

bears to the total value of property used in common carrier service is so small that it would have only a very slight effect upon the rate of return.

Examination of the income accounts for those railroads which in 1967 had the largest amounts of nonoperating income discloses that the indicated correction of their reports would result in raising the rates of return in table 2 by not more than 0.01 percent. The criticism is valid but not of significant importance in this proceeding.

*Net investment.*—Some of the protestants contend that respondents' net investment is overstated, and that if it were reduced, obviously, the calculated rates of return would be more favorable.

We agree, as a matter of principle, with protestants' contention that the balances in account 80, Other Elements of Investment, and account 90, Construction Work in Progress, should be excluded from respondents' net investment for purposes of calculating their rate of return. Prior to 1963, bases for determining the rates of return for railroads were prepared from valuation records maintained by the Commission. These records reflected the original cost of carrier property as found for valuation purposes, appropriately corrected for additions and retirements as reported by the carriers in their annual reports of property changes. During the years that the Commission maintained these records, the cost of construction work in progress was not included as carrier operating property, such cost being allowable only after such property was actually dedicated to public service. See *Illinois Central R. Co.*, 46 Val. Rep. 1, 39-40. By order entered April 17, 1963, we required the railroads to record in their property accounts the original cost bal-

ances contained in the Commission's valuation records. The resulting differences, debit or credit, were recorded in account 80, a new account established for that purpose. At the same time there was established a new account (90) for construction work in progress. Accordingly, the two accounts represent (1) unsupportable items not includible in cost of property, [605] and (2) costs applicable to items of property not in transportation service at date of financial statement. In the circumstances, carriers are not entitled to a return on such amounts; consequently, the balances in these two accounts should be excluded. The effect of these corrections would be to raise the rates of return shown in table 2 by not more than 0.05 percent.

Various additional contentions of protestants regarding respondents' net investments have been examined and found to be without substance. Some of those most vigorously urged are restated below with our comments.

(1) *Contention.*—That land values and improvements in place in 1916 were inventoried at the 1910-1914 reproduction cost which was used as a beginning point for the current investment in railroad property, thereby overstating the net investment by the increased values of land and properties accruing between 1840 and 1914.

*Comment.*—In determining the valuation of railroads, it was found that the average prices that prevailed between 1910 and 1914 for other than land, represented, by and large, the average reproduction cost of railroads; and, in the absence of actual cost which was undeterminable, this index was applied as a beginning base for what later became known as "original cost" of railroad property, other than land. This base was perpetuated through sep-

arate reporting requirements until 1963, when, as above explained, we required the railroads to adopt the original cost balances as carried by the Commission in their investment accounts, with the differences, if any, being recorded in the new account 80. Additionally, over the years approximately 70 percent of the "original cost dollars" that was established to represent the cost of the railroad property at the date of basic valuations has been written off as a result of retirements of such property. Consequently, this large percentage of estimated original cost has been replaced by the *actual* cost of property which has been added subsequent to the date of basic valuations. The appraised value of land was never placed on the railroads' books but was used as part of the rate base in Commission proceedings prior to the year 1964. Upon adjustment of the railroad accounts as aforementioned, the railroads were required to place in their land account the actual cost of land, estimated in part. Such actual cost is used as part of the net investment in the instant proceeding.

[606] (2) *Contention.*—That, for many years after the Commission's valuation of properties, many railroads capitalized maintenance expenses, thus further inflating the investment base.

*Comment.*—There is no responsible basis for such an allegation. Our prescribed accounting rules specifically prohibit the capitalization of expenses. Furthermore, subsequent to the valuation of railroad properties the Commission maintained a large force of valuation field auditors that closely scrutinized railroad property records for proper recording of all additions and betterments; and

this procedure is still followed in connection with our current examinations of railroad accounts and records.

(3) *Contention.*—That until 1943 the railroads were not required to record depreciation for road property, thereby contributing to the inflation of the present net investment.

*Comment.* While it is true that railroads were not required to record depreciation for road property until 1943 there are offsetting factors that should be considered in evaluating the adequacy of the accrued depreciation for road property; and, on balance, we do not believe that the present net investments are overstated for the reason indicated. There is, of course, no question whatsoever as to the adequacy of the depreciation reserves for equipment accounts.[5] In this connection, among other things, consideration has been given to the following:

(a) Many railroads have gone through reorganization. In each instance, when approving the opening entries for the reorganized railroad, we have required the railroad to establish a depreciation reserve considered adequate at the time for past accrued depreciation on road property.

(b) When railroads' accounts were adjusted in 1963 to record the "original cost" of property in their primary accounts, in instances when the adjustment created a credit balance in account 80, we permitted the railroads, upon application, to transfer an appropriate portion of such credit balance to depreciation reserve accounts for road property to the extent necessary to offset any under-accruals as at that time.

5. Cf. *Increased Freight Rates, E., W., and S. Territories, 1956, supra*, at 656-657.

(c) Depreciation accounting is not prescribed for the "track structure" which includes crossties, rails, track material, ballast, and labor. The use of "betterment" accounting for rail results in the investment account balance showing a far lesser amount [607] (probably as much 50 percent) than the actual cost of the rail that is in the track structure today. Crossties, in the carriers' accounts, have remained static in the amount that was recorded per tie at time of the initial valuation. This cost per tie ranges between 30 to 50 cents. If the tie account were restated today to reflect the actual cost of the ties that are in the track structure, the investment accounts would be increased over $1 billion.

(4) *Contention.*—That, in the case of a railroad reorganization, the net investment of the predecessor company has been continued on the books of the reorganized company; and further, that where one railroad acquires another for less than its book value the net investment of the railroad acquired is entered on the books of its new owner the same as on the books of the old company.

*Comment.*—These statements are basically true with respect to transactions occurring in past years. It should be clarified, however, with respect to reorganized companies, that we have required the reorganized company to adopt in its primary property accounts the "original cost" as determined by the Commission at the time of the carrier's basic valuation, brought forward to the date of the transaction, in lieu of using the actual account balances reflected on the predecessor company's ledger. In many instances this adjustment of the accounts has actually resulted in a writedown of property account balances. The

use of this procedure perpetuates for investment account purposes the cost of property at the time it was first dedicated to public service.

*Statutory standards.*—The present inquiry into respondents' cost and revenue need must be conducted in the light of the standards set forth in the Interstate Commerce Act. The rule of ratemaking, section 15a(2), provides:

> In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

In testing, first, whether the proposed rates will move the traffic, we reserve for further consideration in Sub-Nos. 3-11 such questions as discrimination, preference, and prejudice. The question at hand relates to the general freight rate level—are the proposed rates so unreasonably high as to be self-defeating? We [608] think not. As shown in appendix D hereto, the carload freight rate level has declined from the peak reached in 1958, while consumer and wholesale prices have steadily trended upward. Since the Ex Parte No. 223 increase the carload freight rate index (1950=100) declined from 114 in 1961 to 104 in 1966. Referring again to appendix A, respondents' average operating revenue per 1,000 gross ton-miles declined from $6.50 in 1961 to $6.30 in 1967. If all of the

proposed increases are made effective, the latter average, for the constructive year will become $6.65. We agree with the judgment of respondents' traffic officers that the contemplated rate level would have no material adverse affect on the movement of traffic. We have previously found that respondents are in need of the additional freight revenue here sought to offset, in part, their increased operating expenses, including fixed charges and contingent interest. We conclude that the proposed rate level, generally speaking, is within the zone of reasonableness, where management is accorded substantial freedom in service pricing. This conclusion, we emphasize, is not a prejudgment of the issues in Sub-Nos. 3-11.

*Exceptions.*—Our conclusions as to the issues in Sub-Nos. 3-11 will be the subject of a separate and final report, which will embrace all of the tariff schedules under investigation, and will result in automatic refunds to shippers to the extent the proposed rates and charges are found unlawful. Our order herein, by permitting most of the proposed rates and charges to become effective at this time, will provide substantial immediate relief to respondents. We are, however, excepting from the scope of our order, and are retaining under suspension pending further consideration in Sub-Nos. 4 and 5, master tariff item 845, pig iron and iron and steel scrap and item 515, grain and grain products. The authority contained in our order of June 19, 1968, to increase respondents' rates 3 percent (subject to stated maximums) will be continued in force in regard to these two items.

FINDINGS

We find:

1. There is a critical need on the part of the respondent railroads for additional revenue to offset, in part, the

increased operating costs not heretofore considered by us in approving their freight rates and charges. The public interest and that of the national defense, in a sound, adequate, and efficient transportation [609] system will be adversely affected unless the proposed increased interstate freight rates and charges, with the exceptions noted in our order, are permitted to become effective at this time.

2. Without the additional revenue to be derived from the increased freight rates and charges authorized herein, the earnings of respondents would be insufficient to enable them, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service consistent with the public interest and the national transportation policy.

3. The increased freight rates and charges herein authorized will not exceed a maximum just and reasonable level of rates and charges. This finding, however, is without prejudice to other or different findings to be reached in Sub-Nos. 3-11 in regard to particular rates and charges.

4. All of the tariff schedules under investigation, including those herein permitted to become effective, are subject to an automatic refund provision; and, with the other remedial provisions of the act, the shipping public in general is reasonably protected. On the other hand, withholding of the authority herein authorized would result in irreparable injury to respondents and would be contrary to the public interest.

5. Our findings as to justness and reasonableness, which are based upon all of the evidence before us, including

typical evidence as to rates and charges in and between all territories, will apply to the general bases of rates and charges, and will not preclude interested parties from bringing any maladjustments to our attention for correction. The increased freight rates and charges authorized herein are not considered as prescribed within the meaning of the decision in *Arizona Grocery Co.* v. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370, and will, in all respects, be subject to complaint and investigation as provided by the act.

An appropriate order will be entered, including such modification of our outstanding orders and granting such forth-section relief as may be necessary to permit the suspended schedules to become effective, to the extent indicated herein, on 1 day's notice, pending further order of the Commission.

*I.C.C.'s Interim Decision*

[610] APPENDIX A

UNIT COSTS AND UNIT REVENUES

*Railroads of Class I in the United States*

| Year | Gross ton-miles excluding locomotives (billions) | Total operating expenses[a] (millions) | Total operating revenues (millions) | Average per 1,000 gross ton-miles | |
|---|---|---|---|---|---|
| | | | | Expenses[a] | Revenues |
| | 1 | 2 | 3 | 4 | 5 |
| 1961 | 1,413.0 | $8,408.9 | $9,189.1 | $5.95 | $6.50 |
| 1962 | 1,459.9 | 8,557.4 | 9,439.9 | 5.86 | 6.47 |
| 1963 | 1,499.7 | 8,589.8 | 9,559.5 | 5.73 | 6.37 |
| 1964 | 1,557.6 | 8,900.4 | 9,856.5 | 5.71 | 6.33 |
| 1965 | 1,608.7 | 9,082.7 | 10,207.8 | 5.65 | 6.35 |
| 1966 | 1,688.6 | 9,422.5 | 10,654.7 | 5.58 | 6.31 |
| 1967 | 1,645.3 | 9,622.2 | 10,366.0 | 5.85 | 6.30 |
| 1968[e] | 1,675.5 | 9,987.5 | 10,799.8 | 5.96 | 6.45 |
| C.Y. | 1,675.1 | 10,132.6 | 11,136.5 | 6.05 | 6.65 |

*a* — Includes operating rents and taxes other than Federal income taxes.

*e* — Estimated.

C.Y. — Constructive year with proposed rate increases.

## TRAFFIC, EMPLOYMENT AND CONDENSED INCOME ACCOUNT

*Railroads of class I in the United States*

| Line No. | Item | 1966 | 1967 | 1968 | Constructive year |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| | | | *millions* | | |
| 1. | Revenue ton-miles | $ 738,395 | $ 719,755 | $ 744,470 | $ 744,203 |
| 2. | Revenue passenger-miles | 17,085 | 15,201 | 12,792 | 12,792 |
| 3. | Gross ton-miles, freight and passenger service, excluding locomotives | 1,688,642 | 1,645,274 | 1,675,453 | 1,675,135 |
| 4. | Average number of employees | 630,895[1] | 610,192[1] | 589,591[1] | 592,322[1] |
| 5. | Net investment | 26,820.4 | 27,628.8 | 27,817.3 | 27,817.3 |
| 6. | Operating revenues—total | 10,654.7 | 10,366.0 | 10,799.8 | 11,136.5 |
| 7. | Freight | 9,280.6 | 9,130.2 | 9,725.0 | 10,052.3 |
| 8. | Passenger | 543.6 | 485.4 | 416.6 | 417.5 |
| 9. | Mail | 304.0 | 263.6 | 195.9 | 195.2 |
| 10. | Express | 67.3 | 60.7 | 43.7 | 44.1 |
| 11. | All other | 459.1 | 426.1 | 419.5 | 427.4 |
| 12. | Operating expenses—total | 8,117.7 | 8,203.3 | 8,460.0 | 8,594.0 |
| 13. | Wages charged to expenses | 4,605.8 | 4,639.5 | 4,795.9 | 4,893.1 |
| 14. | Depreciation and retirements | 744.8 | 763.9 | 785.0 | 787.8 |
| 15. | Other expenses | 2,767.1 | 2,799.9 | 2,879.1 | 2,913.1 |
| 16. | Taxes—total | 968.4 | 910.5 | 973.4 | 1,025.9 |
| 17. | Payroll | 439.1 | 477.2 | 508.0 | 515.8 |
| 18. | Federal income | 186.3 | 66.5 | 94.4 | 136.5 |
| 19. | Other | 343.0 | 366.7 | 371.0 | 373.6 |
| 20. | Equipment and joint facility rents net dr. | 522.8 | 574.9 | 648.5 | 649.2 |
| 21. | Net railway operating income | 1,045.9 | 677.4 | 717.9 | 867.4 |
| 22. | Rate of return (line 21 ÷ 5) percent | 3.90 | 2.45 | 2.58 | 3.12 |
| 23. | Other income | 399.5 | 457.5 | 427.0 | 420.1 |
| 24. | Miscellaneous deductions | 78.1 | 84.3 | 85.0 | 83.6 |
| 25. | Fixed charges and other deductions | 463.5 | 495.9 | 517.7 | 517.8 |
| 26. | Ordinary income | 903.8 | 554.7 | 542.2 | 686.1 |

[1]—Whole numbers.

*Operating expenses, rents, taxes and fixed charges (excluding Federal income taxes)*

| | Eastern district | | Southern district | | Western district | |
|---|---|---|---|---|---|---|
| | 1966 | Constructive year | 1966 | Constructive year | 1966 | Constructive year |
| | | | *millions* | | | |
| Operating expenses | $3,240.3 | $3,396.7 | $1,205.7 | $1,328.3 | $3,671.6 | $3,869.6 |
| Equipment and joint facility rents | 245.2 | 335.9 | 79.6 | 92.8 | 197.9 | 220.5 |
| Taxes | 340.9 | 381.1 | 144.3 | 161.3 | 483.2 | 483.5 |
| | 3,826.4 | 4,113.7 | 1,429.6 | 1,582.4 | 4,352.7 | 4,573.0 |
| Less Federal income tax | 41.6 | 39.7 | 27.6 | 28.6 | 117.1 | 68.2 |
| Total operating costs | 3,784.8 | 4,074.0 | 1,402.0 | 1,553.8 | 4,235.6 | 4,504.8 |
| Gross ton-miles | 583,968 | 569,957 | 280,349 | 283,749 | 824,325 | 821,429 |
| Ratio, constructive year/1966 | 1.000 | 0.976 | 1.000 | 1.012 | 1.000 | 0.996 |
| 1966 costs at constructive year volume | 3,694.0 | | 1,418.8 | | 4,218.7 | |
| Fixed charges, contingent interest | 222.6 | 244.4 | 76.6 | 88.9 | 164.3 | 184.5 |
| Total operating expenses and fixed charges | 3,916.6 | 4,318.4 | 1,495.4 | 1,642.7 | 4,383.0 | 4,689.3 |
| Increase over 1966 | | 401.8 | | 147.3 | | 306.3 |
| Percent increase | | 10.26 | | 9.85 | | 6.99 |

[614] APPENDIX D

*Comparison of BLS consumer price and wholesale price indexes with I.C.C. index of railroad construction costs and freight rate indexes*

| Year | Consumer price | Wholesale price | Annual railroad construction costs | Railroad carload freight rates |
|---|---|---|---|---|
| | *1950=100* | | | |
| 1947 | 92.8 | 93.5 | 89.6 | 80 |
| 1948 | 100.0 | 101.3 | 98.3 | 93 |
| 1949 | 99.0 | 96.2 | 98.6 | 99 |
| 1950 | 100.0 | 100.0 | 100.0 | 100 |
| 1951 | 108.0 | 111.4 | 106.2 | 102 |
| 1952 | 110.4 | 108.3 | 109.4 | 109 |
| 1953 | 111.2 | 106.8 | 113.2 | 111 |
| 1954 | 111.7 | 107.0 | 113.9 | 109 |
| 1955 | 111.3 | 107.4 | 116.7 | 108 |
| 1956 | 113.0 | 110.8 | 125.7 | 112 |
| 1957 | 116.9 | 114.1 | 132.3 | 118 |
| 1958 | 120.2 | 115.7 | 135.4 | 121 |
| 1959 | 121.1 | 115.9 | 138.2 | 118 |
| 1960 | 123.0 | 116.0 | 138.5 | 116 |
| 1961 | 124.3 | 115.6 | 137.8 | 114 |
| 1962 | 125.8 | 115.9 | 137.5 | 112 |
| 1963 | 127.3 | 115.6 | 137.2 | 109 |
| 1964 | 129.0 | 115.8 | 137.2 | 107 |
| 1965 | 131.1 | 118.1 | 137.8 | 105 |
| 1966 | 134.9 | 122.0 | 140.3 | 104 |
| 1967 | 138.7 | 122.2 | N.A. | 105p |

p—preliminary

# INTERSTATE COMMERCE COMMISSION

## Ex Parte No. 259

## INCREASED FREIGHT RATES, 1968

## FINAL REPORT AND ORDER

[714] Ex Parte No. 259

INCREASED FREIGHT RATES, 1968

*Decided January 9, 1969*

Proposed increases in railroad freight rates and charges intraterritorially within eastern, western, and southern territories, and interterritorially between such territories found just and reasonable except as specifically provided herein. Appropriate order entered, including such modification of our outstanding orders and fourth and sixth section relief as may be necessary to permit the increases approved to be established and maintained.

Appearances as shown in prior report.

Additional appearances: *W. R. Humphrey, Jr., S. J. Jablonski,* and *Gerald E. Stitt* for protestants.

*I.C.C. Final Order*

REPORT OF THE COMMISSION

BY THE COMMISSION:

Our prior report in this proceeding, decided November 25, 1968, (332 I.C.C. 590), concerned primarily the issue of the increased operating costs of the railroad respondents and the extent to which a need for increased revenues had been proved. We there found that the respondents had established the need for additional revenue at least as great as that sought by the proposed increases in their rates and charges, and partially vacated our order of June 19, 1968 which suspended operation of the schedules of proposed increases, but permitted an increase of 3 percent to become effective pending the outcome of this proceeding. The proceeding was continued for the consideration of the lawfulness of the proposed and interim increases as they applied to specific commodities and services, and of the evidence and arguments of all parties with respect thereto. The procedural history of the case is set forth in our prior report and will not be repeated. Our findings as to increased railroad operating costs and revenue need, as set forth and explained therein, are adopted and made part of this report as though fully restated. Those findings, together with the [715] further findings made in this report, constitute the basis for our ultimate conclusions and order herein.

The proposed increases vary from 3 to 10 percent, or by specific amounts generally within that range. Many protestants object to this approach contending that it is productive of discriminations. The higher increases on certain commodities or services, however, stem from recognition by the respondents of the extent to which rates on those commodities or services can be increased without

producing substantial loss of traffic to competing forms of transportation or substantial reduction in the volume of traffic. Where lesser increases apply they reflect a determination by the respondents that any greater amount would not, at this time, result in increased revenues. While a single percentage increase has the appearance of uniformity and nondiscriminatory treatment of shippers, we have indicated in the past the need for a more selective approach. Even where uniform increases have been approved, competitive conditions have quickly required the carriers to make revisions with respect to specific commodities in order to retain traffic. The consequence has been, within a short time, an increased rate structure as varying as here proposed.

Inherent in a general rate increase proposal is the right of election by specific carriers to make use of the authority in whole, in part, or not at all. Thus, our conclusions herein do not require that any respondent increase its rates by any particular amount nor, except as specifically provided herein, do they preclude variability of application, provided increases do not exceed those allowed. We do not herein purport to determine whether the particular rates which result from the increases are maximum reasonable rates, nor does our order constitute a prescription of rates within the meaning of the decision in *Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370.

The Manufacturing Chemists' Association asserts that the additional revenue to be derived from chemical traffic under the proposed increases is excessive and out of proportion to the volume of chemical traffic. Other protestants have called attention to similar conditions with respect to their traffic, and to the fact that in particular rate tariffs, various railroads have flagged out of the in-

creases on various commodities in whole or in part. The contention is made that the respondents are assessing an unreasonable proportion of the increased revenue need upon some industries while failing to assess a reasonable proportion upon others. That different commodities or services make varying [716] contributions to net revenue is well recognized. *Sugarcane From South Florida to Clewiston, Fla.*, 281 I.C.C. 47, 63. Our authority under section 15(1) in respect to rates rests upon a finding that the proposed rate is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of the Interstate Commerce Act. The criteria provided by the statute, including those set forth in section 15a(2), do not comprehend consideration of the extent to which the overall movements of particular commodities contribute to net carrier revenue in a proceeding of this nature. We are concerned with the lawfulness of the increased rates and charges applicable to the various commodities and services; the effect of such increases on the movement of traffic; the need, in the public interest, for adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and the need for revenues sufficient to enable the carriers, under honest, economical, and efficient management to provide such service.

One of the primary contentions made by protestants is that the increases will result either in drying up movement of particular commodities or diversion of the traffic to competing forms of transportation, to such an extent that there will be no actual revenue increase produced. They seek to have us apply the criteria set forth in section 15a(2) of the act and bar the increases on the ground that they would be self-defeating. The respondents assert

that such consequences will not ensue. While we shall refer to certain of these arguments hereinafter in connection with specific commodities, we observe at the outset that predictions of this nature are always diametrically opposed in rate increase cases and must be treated as having limited probative value. For these reasons, denial of rate increases for which need has been established would require evidential support more reliable and persuasive than has been provided in this record.

A number of protestants submitted studies showing costs and revenues for the transportation of particular commodities or types of traffic. It is contended that revenues from present rates, without the increases, now exceed out-of-pocket costs, and, in many instances, fully-distributed costs, by substantial margins. Increases, it is argued, are not justified in such cases. A related contention is that the respondents have failed to show that the increases in operating costs directly related to the transportation of specific commodities are proportional to the rate increase proposed for such commodities. Neither of these contentions is [717] sufficient to warrant denial of the increases. It is clear that rates substantially in excess of full costs do not necessarily exceed a maximum reasonable level. *General Motors Corp.* v. *New York Central R. Co.*, 311 I.C.C. 622, 625. Additional revenue required to meet increased operating costs and fixed charges must be obtained from all traffic insofar as possible, whether or not specific traffic is profitable, or contributes more or less revenue, or incurs more or less costs than other traffic. Costs of specific commodity movements are not in issue. See *Increased Freight Rates, E., W., and S. Territories, 1956*, 300 I.C.C. 633, 676. Our admonition in *Increased Freight Rates, 1967*, 332 I.C.C. 280, 285, respecting a study of the

unit costs of performing transportation services did not contemplate detailed, individual studies of particular traffic movements. The compilation, presentation, and evaluation of data in such massive proportions, as urged by protestants, would make impossible the effective prosecution of our regulatory function, and is not required by the Interstate Commerce Act. *United States* v. *Louisiana*, 290 U. S. 70, 76.

*Commodity grouping.*—On March 7, 1968, the respondents issued a publication entitled Standard Transportation Commodity Code Tariff No. 1 (STCC), effective April 16, 1968, which consisted of a listing of commodities arranged as follows. The code numbers were assigned in general groupings, each designated by a two-digit number from 01 to 42. Subgroupings of commodities within the general groups were assigned numbers containing additional digits up to a maximum of five, preceded by the general group numbers, the arrangement being such that any particular code number includes all commodities more specifically coded with that number than under a heading of fewer digits. Thus for example:

| | |
|---|---|
| Code 23 | Apparel; AAO. Other Finished Textile Products or Knit Apparel. |
| 23 1 | Mens, Youths or Boys Clothing;<br>aao. uniforms<br>exc. leather or sheep lined, or raincoats see 238 |
| 23 11 | Mens, Youths or Boys Clothing;<br>aao. uniforms<br>exc. leather or sheep lined see 2386 or raincoats see 2385 |
| 23 111 | Mens, Youths or Boys Clothing;<br>aao. uniforms<br>exc. leather or sheep lined see 23861 or raincoats see 23851 |
| 23 111 10 | Blazers, wool |
| 23 111 50 | Lumberjacks, cotton or cotton and wool |

[718]

| | |
|---|---|
| 23 3 | Women's Misses or Childrens Clothing;<br>aao. infants<br>exc. fur see 237, raincoats see 238 or surgical see 384 |
| 23 5 | Caps, Hats or Millinery;<br>aao. hat bodies<br>exc. fur see 237 |

(aao—also applies on)
(exc—except)

Tariff X-259, here in issue, grouped the commodities to which the proposed rate increases applied under separate tariff item numbers but, by use of the Standard Transportation Commodity Code numbers referred to above, made the increases applicable to numerous commodities included within the code groupings. This was accomplished by listing the most general group number and commodity description in the increase tariff. Thus, for example, Item 660 of the tariff provides an increase on STCC 14 716 *Sulphur, crude, liquid, molten or solid.* Reference to STCC Tariff No. 1 shows that Code 14 716 includes as subgroups the following items:

| | |
|---|---|
| 14 716 10 | Sulphur (brimstone), ot crude |
| 14 716 15 | Sulphur (brimstone), crude<br>aao. sulphur rock or sulphur balls |
| 14 716 20 | Sulphur, liquid or molten |
| 14 716 30 | Sulphur residue |

(ot—other than)

Some of the protestants have challenged this method of tariff publication as unnecessarily intricate and productive

of confusion. We are satisfied, however, that it is a worthwhile step toward the eventual simplification of tariffs and may, with appropriate development and refinement, lead to application of automatic data processing procedures in determining rates. It is also contended that, in certain instances, the grouping of commodities in tariff X-259 by use of the STCC code numbers disrupted relationships in rates between commodities which, for competitive or other reasons, have historically been accorded similar rates and rate [719] adjustments. In some instances, the respondents have acknowledged that revisions of the tariff are appropriate to retain such relationships. These are considered in this report as they arise in connection with our discussion of the involved commodities. The respondents will be expected to give careful consideration to other such instances when discovered or brought to their attention and to make such revisions as are warranted.

A number of protestants have called attention to the fact that tariff X-259, in referring to the Standard Transportation Commodity Code, identifies it only by reference to the publication of the Traffic Executive Association—Eastern Railroads, Agent, I.C.C. C-686. It is argued that, since this publishing agent acts only for eastern railroads, all other railroads (except in joint-line haul situations) are without authority to employ the master increase tariff X-259 by reference to the commodity groupings in the code. We consider this contention lacking in merit. Reference in the master tariff to the publication of the code by one of the agents is sufficient.

*Commodities generally.*—Respondents propose to increase their class rates by 5 percent. On commodity and exceptions rates, in those instances where specific carload rate increases are not published, the proposed increase

is 6 percent. Only new, sporadic, or light and bulky traffic moves at carload class rates and only a few class I railroads offer unrestricted less-than-carload service. The respondents also propose to increase their per-car minimum charges for line-haul service 5 percent between and within southern and western territories, excluding some destinations on The Chesapeake and Ohio Railway Company. There is no substantial evidence in opposition to these increases. The class I railroads in 1966 incurred a deficit of more than $100 million in handling less-than-carload traffic. We are of the opinion that the proposed increases of the foregoing rates and charges will be just and reasonable.

*Accessorial services.*—Respondents propose to increase accessorial service charges 6 percent with various exceptions. For example, charges for split delivery, loading, or unloading are increased 5 cents per 100 pounds or $1 a ton, except that in eastern territory the charges would be increased 6 percent, and a $3 minimum increase is provided in some instances. Certain of the protestants who must use the railroads' services pay substantial sums for accessorial services and they claim that the increases in such charges are excessive or discriminatory.

[720] The charges for accessorial services were increased between 1960 and 1967; thus the respondents did not forego such increases as they did in connection with their line-haul rates. Nevertheless, respondents' evidence shows that their territorial average out-of-pocket costs of providing accessorial services generally exceed the charges made for these services. Since this proceeding is to determine the lawfulness of the proposed increases, rather than inequities in particular charges, individual cost studies at the numerous locations were not required.

Different accessorial charges are provided for like services on different commodities or at different localities. Thus, higher transit charges are applied on lard or shortening than on canned goods; and transit charges at Chicago, Ill., are maintained per 100 pounds, which results in greater charges for large shipments than charges stated per unit other than weight. Some protestants argue that the lower charges should be increased to cover more of respondents' costs, and that the higher charges should not be increased or should be increased by lesser amounts. Numerous protestants, on the other hand, object to the higher percentage increases in the lower charges which result from use of the $3 minimum. We conclude that the increases in the accessorial service charges are within the zone of reasonableness and that merely showing that they are on relatively different levels does not establish that they are unlawful.

*Trailer-on-flatcar (TOFC.)*—The respondents propose a 6 percent increase in rates and charges for TOFC service, except for ramp-to-ramp service and where specific increases are provided for carload commodity and exceptions rates. The charges for ramp-to-ramp TOFC service would be increased 6 percent between and within eastern and western territories, but 3 percent from, to, and within southern territory. The Virginia State Ports Authority, The North Atlantic Ports Association, Inc., and the Port of New York Authority oppose the increase for ramp-to-ramp service, asserting that it would disturb port rate relationships and cause a substantial diversion of import and export traffic to South Atlantic and Gulf ports; but they have not referred to specific port relationships prescribed by us which will be disturbed by the proposed increases. In the event a prescribed basis is disturbed, the respondents will be expected promptly to restore the relationship.

ITOFCA, Inc., a nonprofit association of shippers, opposes the 6 percent increase in detention charges on trailers provided by [721] the railroads for TOFC ramp-to-ramp service. It argues (1) that the present charges are excessive when related to the railroads' investment in trailers, the interest on the investment, and the cost of maintenance and (2) that the trailer detention charge is excessive when related to the demurrage charge on a like shipment in boxcars, for which no increase is proposed. In this type of TOFC service the shipper or receiver arranges for the drayage of the trailer between its plant and the railroad's ramp. The shipper or receiver, or his agent, the drayman, has possession of, and can use, the trailer, whereas a boxcar remain on the rail siding and has little use except for possible storage. Thus, trailer detention charges and boxcar demurrage charges cover unrelated services. The detention charge, moreover, may be avoided by promptly returning the trailer to the railroads. We see no reason why this service should not bear a portion of the railroads' increased operating costs and we find no unlawfulness in the proposed increase in the trailer detention charge.

*Switching.*—A 6 percent increase is proposed in charges paid by the shipper or receiver for intraplant, intraterminal, and interterminal switching. Evidence in opposition to the increases was offered by petroleum, steel, beer, grain, and other interests. Lukens Steel Company noted that its intraplant switching charge had been increased $5, which amounted to 35 percent, under Ex Parte No. 256. The charges at that level ranged between $19.49 and $23.39 per car. The 6 percent increase sought herein would make a total increase of 41 percent, above the pre-Ex Parte No. 256 level. The official territory out-of-pocket cost, increased to the January 1, 1968 level, for providing this

service is shown as $30.88 in boxcars and $33.59 in other cars.

The members of Western Pennsylvania Refiners Traffic Association have plants in small communities usually on the line of a single carrier, and they require simple switching services. The association argues that the increases will apply to new minimum charges, which were suspended in Investigation and Suspension Docket No. 8404, Switching Charges, Eastern Territory. Although that proceeding was discontinued July 18, 1968, after the suspended increases were canceled, as pointed out by respondents in their brief, the new minimum charges were then published in their switching tariff and became effective September 13, 1968. The association argues that the proposed increases added to those in Ex Parte No. 256 are in excess of any just and reasonable charge for performing the service. Reference is made to present [722] switching charges at Bradford, Pa., of $18.26, $27.47, and $43.48 per car, respectively, for intraplant, interplant (apparently intraterminal), and interterminal switching. Respondents' evidence shows, however, that these charges cover only a little more than one-half of the average out-of-pocket costs in official territory for providing such switching services.

The board of trade of the city of Chicago objects to increases in the switching charges on grain in that area. The charges, stated in cents per 100 pounds, are at a level where the 6 percent increase is rounded to 1 cent, producing a percentage increase in the switching rate of about 9 percent. This protestant contends that a percentage increase in the type of switching charges maintained at Chicago places a greater per-car increase on the

heavier loading commodities and that on a car weighing in excess of 50 tons, the charge would be from 200 to over 300 percent of the out-of-pocket costs. Not all commodities, however, are heavy loading. The protestant also asserts that the switching charges have increased about 60 percent since 1958, whereas the "BLS" consumer price index relied upon by the respondents increased only 17 percent in the same period. In *Switching Rates in Chicago Switching District*, 177 I.C.C. 669 (1931) and later reports, the Commission prescribed the maximum switching rates on all commodities in the Chicago switching area. The present switching charges are on the prescribed basis increased as authorized in other general revenue proceedings and reflect the complicated switching situation at Chicago.

The Granite City Steel Company notes that at East St. Louis, Ill., the switching charges were increased between 4.2 and 18.5 percent in Ex Parte No. 256, and that the additional increases involved herein would extend the increase to between 10.4 and 25.9 percent above the pre-Ex Parte No. 256 level. East St. Louis is a border point assigned the eastern territory increase in Ex Parte No. 256, whereas switching charges in southern territory were not increased and those in western territory were only increased one-half the amount of the flat increase in eastern territory. This protestant seeks to have the proposed increases in switching charges at the East St. Louis switching district canceled to remove a part of the alleged prejudicial treatment suffered by that district under Ex Parte No. 256. While the railroads have often accorded different rate treatment to border points than to interior points, it is not feasible to revise individual rate adjust-

ments in this general revenue proceeding, nor is there evidence sufficient to find the proposed increases at East St. Louis unlawful.

[723] The Institute of Scrap Iron and Steel urges that the proposed increases will further hamper the rail movement of iron and steel scrap. Unregulated motor carriers now transport iron and steel scrap to the processing yards, from which it is sent to dockside for export or to mills for further processing. In order to dispose of the vast amount of iron and steel scrap some of it must be exported. However, the market is depressed and the protestant argues that increased switching charges will encourage foreign users to obtain their needs elsewhere or to switch to iron ore. The respondents' switching costs at the ports have increased the same as at other points, and the railroads cannot be expected to transport export traffic at less than out-of-pocket costs. No reason is shown why the iron and steel scrap industry should be excused from bearing a part of the increases in rail costs.

In view of the evidence of record, we conclude that the increases proposed in switching charges are just and reasonable and not shown to be unlawful.

*Transit.*—Respondents propose to increase their transit charges 6 percent and, except in eastern territory, to make the increase subject to a minimum of $3 a car. At most stations in western and southern territories, the minimum transit charge when published per car is to be increased 6 percent, minimum $3 per car. The charge for stopping carload shipments in transit to partially load or unload is to be increased $3 per stop in southern (except for TOFC service and transloading) and western territories. At all other points a 6 percent increase is proposed.

The increases in transit charges are opposed by many interests, including the sugar, flour, edible oil, foodstuffs, rag, and waste industries. The Northern Ohio Sugar Company processes sugar in the last quarter of each year, and in order to supply its customers on a regular basis, places large quantities of sugar in public storage. The transit charge of 6.5 cents per 100 pounds, established about 2 years ago would become 7 cents under the proposed increase. This protestant claims that the increases are forcing it to build storage facilities at its factories and to discontinue public storage, which could divert traffic from the railroads.

The Pillsbury Company ships grain and flour by carloads into its warehouses and mixed carloads of grain or flour and foodstuffs from those warehouses. The grain rates include transit, but the foodstuffs rates are subject to transit charges, which vary according to the mixture in the car. The $3 minimum transit charge would apply on the foodstuffs in these mixed shipments and could [724] produce a percentage increase of as much as 61 percent in some instances. Without the transit service, however, the foodstuffs would be charged higher less-than-carload rates.

Franklin Bros. & Co., Inc., which ships rags and textile waste, argues that since in many cases the stopoff charges produce total transportation costs which exceed its margin of profit from the lading, in many instances the traffic will be lost to the railroads. It also asserts that its export shipments of textile waste material through the port of New York, have fallen off because its prices, which must include the extra charges, are not in line with those of foreign competitors. Several protestants object to increases in transit charges on traffic going through the ports. The members of the Western Petroleum Refiners' Association

would have to pay the increased charges at the ports, whereas their competitors located on the waterfront would not have to pay for these services. General Foods Corporation argues that an increase in the split delivery charge of 5 cents per 100 pounds, minimum $1, at Philadelphia, Pa., on imported cocoa beans is inequitable and unreasonable. Virginia State Ports Authority opposes increases in waterborne charges.

A number of special service charges would be increased 6 percent. The Lukens Steel Company objects to increases in addition to those permitted in Ex Parte No. 256, *supra*. The United States Department of Agriculture opposes the increases in charges for supplying grain doors, and for holding cars of grain for inspection and disposition orders. The holding and inspection charge is not applicable at all stations. The board of trade of the city of Chicago objects to the increases in charges (1) for inspecting grain held on inspection tracks after the expiration of free time, and (2) for diversion and reconsignment charge increase. The protestants assert that the increases have not been justified, or result in charges which are out of line with those at other points.

The out-of-pocket costs of providing transit services have increased. In eastern territory, for instance, they were $68.96 as of April 1, 1967 and $72.36 as of January 1, 1968, representing an increase of about 5 percent. The stopping-in-transit charges increased about 5.7 percent in that territory during the same period. Since transit charges as increased will still cover the costs of providing the service, the proposed increases appear to be within the zone of reasonableness.

*Minimum line-haul revenue.*—In Ex Parte No. 256 the eastern carriers were authorized to increase by one-third

the minimum [725] net line-haul revenue they must receive before absorbing any portion of switching charges. As so increased the minimum amounts ranged generally between $60 and $67 per car. No increases, however, were authorized at St. Louis, Mo. and East St. Louis, Ill., where they were opposed by Granite City Steel Company, and where minimum net line-haul revenue requirements of $49.83 for single-line and $62.74 for joint-line services had recently been established.[1]

Southern territory carriers withdrew from the proposal in Ex Parte No. 256; but they now propose to increase their minimum revenue requirement by one-third at southern territory points and at certain Mississippi River crossings, including St. Louis and East St. Louis. At other points, respondents propose an increase of 6 percent. Granite City Steel Company again opposes the increases at St. Louis and East St. Louis, contending that increases in excess of 6 percent would be out of line and excessive. Respondents argue that in Ex Parte No. 256 we acceded to this protestant's request by treating St. Louis and East St. Louis the same as southern territory; that protestant had made an election to this effect; and that, to be consistent, these points should be given the proposed southern territory increase of 33⅓ percent. We do not consider such argument as justification for higher percentage increases in minimum requirements at St. Louis and East St. Louis than elsewhere in the East. On the other hand, the record affords no factual basis for exact equalization of such minimum requirements. In the circumstances, therefore, we shall limit our authorization in this proceeding to an increase of 6 percent at St. Louis and East St. Louis, leaving respondents free subsequently to

1. See 329 I.C.C. 854, 950.

publish such further modification as they are prepared to justify.

Except as above noted, absent opposing evidence, we find the proposed increases in minimum line-haul revenue requirements justified.

*Train service and detention charges.*—Westinghouse Electric Corporation, National Electrical Manufacturers Association, and Hydraulic Turbine Manufacturers, in behalf of their members, oppose a 6 percent increase in the special train service charge. Because of the large size and heavy weight of transformers and other commodities which they ship, these protestants often find it necessary to use special train service, the charge for which is in addition to all other charges. In July 1965 the charge was increased from $7.35 to $8.50 per mile. In Ex Parte No. 256, the [726] charge was increased to $8.93 or $9.35 per mile, depending upon the territory. In support of the 6 percent increase the respondents state that at times, because of weight or dimensions, a complete train crew and the necessary motive power are required to handle a particular shipment. On occasion such trains must move over circuitous routes and at reduced speeds. These same protestants oppose the 6 percent increase in the use and detention charges on the heavy flatcars, which are used by electrical manufacturers to move their large, heavy commodities. Demurrage or detention charges applicable to all other types of cars are excluded from the increases in this proceeding. Use and detention charges on heavy-duty flatcars were increased effective June 16, 1968 by 5 and 10 percent but were not otherwise increased in Ex Parte No. 256. The respondents point out that these cars are expensive and, although in continuous use, are underutilized from an annual mileage standpoint. The use charge is to compensate

the respondents for unusually high investments for special rail equipment. But the protestants argue that, as the investment is fixed, it is being offset by the present charge; and there is no justification to increase it. However, replacement costs are constantly increasing; a 700,000-pound car which cost $93,695 in 1961 would cost about $123,000 to replace in 1968. The detention and demurrage charges can be avoided by the prompt release of the heavy-duty flatcars. No reason appears why these services should not bear a portion of the revenue requirements.

*Coal.*—Bituminous coal is the largest single commodity handled by class I railroads. In 1967, it comprised 24.83 percent of all tons carried and 26.78 percent of all tons originated. Revenue from this traffic constituted 11.91 percent of revenue received on all freight. The respondents estimate that the proposed increase on coal will produce $48 million annually in additional revenues.

In the East, including the Pocahontas region, bituminous coal constituted 38.37 percent of all freight carried in 1967, and 44.18 percent of all freight originated. The greater part of the movement in this area is by rail and it is estimated that the proposed increases will produce increased revenues of about $36 million annually for class I carriers. In 1967, over 68 percent of the bituminous coal produced in the United States moved from origin by rail. Total annual production since 1950 has varied between 390 million tons and 550 million tons, and between 68 and 76 percent has moved by rail. During that period, the average rail rate fluctuated between $3 and $3.58 per ton. These average figures [727] include the rates charged on the numerous volume, unit train, and trainload arrangements which have become more and more common in recent years.

*I.C.C. Final Order*

The respondents propose to increase their rates on bituminous coal (including export coal), anthracite, coke, coal briquets, and petroleum coke briquets 5 percent, maximum 15 cents per ton. On lignite coal and lignite coke the maximum is 7.5 cents. The proposed schedules provide for the usual limitations and provisions for a single increase on coal moving, for example, rail-ocean-rail, and rail-river-rail, and on lake-cargo coal moving beyond the upper Great Lakes docks to interior destinations (8 cents per ton on the first rail leg and 7 cents per ton on the second rail leg). Charges for handling and transferring of coal at lower lake docks are proposed to be increased 6 percent. No increase is proposed in the dumping charges at Hampton Roads, Va., in connection with export coal. The proposed increases are estimated to average about 4.2 percent.

The National Coal Association, other associations, and numerous coal producers, electric utilities, and steel manufacturers, oppose the increases on bituminous coal and on accessorial charges where applicable to coal. It is contended that the proposed increases will result in reduced revenues due to replacement of coal by competitive forms of energy and the diversion of coal traffic to nonrail forms of transportation.

Coal in the East is faced with severe competition from imported residual fuel oil. In 1966, imported oil amounted to 358 million barrels, or the equivalent of about 86 million tons of coal. Residual fuel oil has displaced bituminous coal at 3 major utilities in the East. While displacement was not systemwide, residual fuel oil displaced bituminous coal at 12 plants which burned 3.7 million tons in 1966 before converting. The protestants also contend that coal pipelines and mine-mouth generating plants constitute a serious threat to rail movement of coal in eastern territory.

It is argued that the proposed increases will greatly influence the future planning of utility companies with respect to construction of plants adapted to the use of other types of fuel, such as nuclear energy, oil, and gas. Some of the protestants' existing plants are equipped to burn either coal or gas and further increases in the delivered cost of coal, it is asserted, would induce conversion of other plants. According to protestants, during the period 1965-67 electric generating companies placed orders for nuclear plants aggregating about 30 million kilowatts, which [728] will displace approximately 85 million tons of coal. They state that the precise cost of generating electricity at large nuclear stations, in the 1 million kilowatt range is unknown, but that even if these plants work as expected, bituminous coal should be kept competitive. It is their view that the cost of nuclear fuel may rise in the future as a result of the shortage of uranium, but that utility executives have been inclined to follow the optimistic projections of the Atomic Energy Commission. They assert that, in some situations, nuclear power was chosen over coal, even though the latter had an edge from a cost standpoint, because of the fear that governmental restrictions on sulfur emissions would require expensive corrective measures. However, progress has been made to overcome this problem and the protestants expect that coal's handicap will be reduced substantially within a few years.

It is also asserted that the proposed increases will nullify, in effect, the volume rates which were established after detailed negotiations with various utility companies leading to operational innovations and substantial economies to the carriers. To secure reduced volume rates, the protestants accepted such tariff limitations as restricted turn-

around time, minimum number of cars per train, placement time limits for unloading, weighing of the coal by the utility, enlarged trackage at receiving stations, the purchase and use of special unloading equipment, and the payment of freight bills on an expedited basis from unloading reports. The protestants argue that the proposed increases violate the spirit and understanding of the negotiations that led to the establishment of these volume coal rates and that such increases will effectively undermine the integrity of all rates negotiated in good faith.

Southeastern protestants contend that, since the railroads serving this area are among the most prosperous carriers in the Nation, their request for additional revenue is totally unjustified. A cost study was presented by these protestants which indicated that the rates presently in effect provided the involved railroads in excess of $20 million per year in revenue contribution above out-of-pocket costs. While the average rate of return of all class I railroads in 1967 was 2.45 percent, the principal coal-carrying railroads serving the Southeast had rates of return of over 5 percent in 1966 and 1967. But such a rate of return cannot be said to be excessive when low-risk capital, such as government, municipal, and high-grade corporate bonds are currently returning [729] better than 6 percent. Moreover, as we have long recognized, in general revenue proceedings, the needs of the group rather than individual lines must control. See *General Commodity Rate Increases, 1937*, 223 I.C.C. 657, 744.

These protestants also assert that little or no increase was applied after the Ex Parte No. 256 proceeding on coal moving under section 22 rates to the Tennessee Valley Authority, with which they compete; that the railroads

would have received over $3 million in added revenue if the increases had been applied to those rates; and that it is highly inequitable to subject their coal traffic to substantial increases while excusing their competitor from making any additional contribution to the railroads. This is not a matter appropriate for consideration in this proceeding.

Coal moving to upper lake ports and to Canada meets competition from natural gas and substantial rate reductions have been made in recent years to counter loss of traffic. In 1958, a blanket reduction of 30 cents per ton was made, followed in the period 1960-65 with a number of specific reductions to particular destinations, ranging from 13 cents to 37½ cents. In 1964, rates on coal moving to points in Ontario were reduced by from 30 to 60 cents per net ton. In June 1968, a reduction of 40 cents per ton was made in the rail-lake transportation charges to meet the competition of lignite moving from Canada. In recent years the Penn Central, Bessemer and Lake Erie, and Norfolk and Western have spent in excess of $30 million in improving storage and transfer facilities at lower Great Lakes ports to handle the lake-cargo movement of coal.

Statistics furnished by the protestants indicate that coal moving via rail-lake transportation from United States origins to all destinations in the United States has increased from 38,210,000 tons in 1963 to 40,636,000 tons in 1966. The Lake Carriers Association and the Upper Lake Docks Coal Bureau, Inc., seek elimination of the increase or limitation thereof insofar as lake-cargo coal is involved, asserting that particular problems are encountered due to the movement by different transportation methods. Attention is called to instances of diversion from vessel to rail movement following the introduction of trainload rates. The

respondents, however, assert that the reduced rail rates were made necessary by the threatened loss of traffic as a result of competing fuels. The water carriers refer to the reduction in tonnage handled by them between 1965 and 1966 in movements to Michigan, Wisconsin, New York, Minnesota, and Indiana, and ar- [730] gue that if the full increase is applied it will be impossible for them to increase their rates to meet their cost increases. Substantially similar contentions were made in Ex Parte No. 223 and in Ex Parte No. 256. Within the scope of the issues in a general revenue proceeding, we find no basis shown for denying the proposed increase on coal moving to lower lake ports.

A substantial tonnage moves from United States ports on the lakes to Canada for fuel and metallurgical uses. The parties disagree as to the extent to which United States vessels participate in the latter movement, the protestant vessel owners asserting that such coal moves almost exclusively in Canadian vessels. Dealers in bituminous fuel coal in Canada stress the competition of natural gas and oil in their marketing territory, as do also the receivers in upper Michigan, Wisconsin, and Minnesota. The competitive conditions in these areas are comparable to those encountered by users of coal throughout the United States, and no reason appears why lake-cargo coal should be exempted from the increases.

Protestant steel manufacturers assert that their raw materials move under more favorable circumstances and conditions than almost any other group of commodities and that such favorable transportation characteristics should be accorded substantial weight in the Commission's consideration of the propriety of the proposed increases.

These raw materials, they contend, move to protestants' plants in multiple car or trainload quantities, are loaded to heavy average carload weights, are handled in regular movements from a limited number of origins to a limited number of destinations requiring relatively little switching and relatively few interchanges, and the cost of transportation, therefore, is relatively low. According to protestants, unit cost trends since 1960 have been generally declining and the trend in contribution to revenues over and above out-of-pocket costs has been rising, resulting in a disproportionate share of carrier revenue requirements being assessed against these commodities. A cost analysis was presented which indicates that the contribution to the railroads' constant cost and profits made by metallurgical coal during the period 1961-67 increased from $25.4 million to $32.6 million—a gain of over 28 percent.

Generally, steel manufacturers assert that the steel industry is contributing more than its share of the railroads' revenue requirements. Their calculations indicate that revenue from metallurgical coal movements exceeds out-of-pocket costs of the move- [731] ments by greater percentages in 1967 than in earlier years. The more significant comparison, however, is between the amount of service performed and the revenue received therefor. Thus, statistics which include steel industry raw materials as a group (bituminous coal, iron ore, coke, and fluxing stone) show that in the period 1950-66, tons transported by eastern railroads for the eastern steel industry constituted 21 percent of all tons carried and 18 percent of all ton-miles but produced only 12 to 13 percent of total freight revenues. Between 1950 and 1967, in the southern region, bituminous coal constituted between 23 and 26 percent of total tons carried, and produced between 13 and 15 percent of total revenue.

It is also urged that domestic steel manufacturers encounter severe competition from imported steel and cannot bear further increases in raw material costs. Problems in international competition cannot, however, be solved by regulatory limitation on otherwise valid rate increases of service industries.

The Federal Interagency Committee on Coal Exports, composed of representatives of the Treasury, State, Interior, and Commerce Departments of the United States, the Coal Exporters Association of the United States, Inc., representatives of the Japanese Steel Industry, and Japanese Importers and Exporters of coal, oppose the proposed increases on export coal. The committee is primarily concerned with the allegedly adverse effects the proposed increases will have on the Nation's international balance of payments situation, which at the present time is in a deficit position. It is also concerned with the impact the proposal will have on both local and national economies.

Coal exports have made a major contribution to the balance of payments running close to $500 million a year and continuation of these trade earnings is of great importance to the Nation. These protestants assert that the most influential factor in the maintenance of the present position of United States export coal in the international energy market is the delivered price of such coal at exit ports, and it is contended that any action which increases the delivered price of coal is competitively disadvantageous and inimical to the Nation's balance of payments.

The Japanese interests assert that a further increase in the price of American coking coal will compound the already serious balance of payments problem and will also

encourage the large Japanese trading companies to further develop alternate sources of supply. They stress the competition American coal is facing from [732] Australia, western Canada, the U.S.S.R., Poland, and other countries and state that should the price difference between American coking coal and coal from other sources become greater, they would have to seriously consider cancellation of present long-term contracts.

Attention is also called to the losses in shipments of United States coal to European countries recently, particularly to Italy, the Netherlands, Belgium, and Luxembourg. While these are alleged to have resulted from increases in delivered prices of U.S. coal in 1967, other factors are admittedly involved, including the increasing availability of high-grade coking coal from West Germany, Poland, and the U.S.S.R. Prices of these competing coals are not based strictly on economic considerations and the increased exports from West Germany were made possible by subsidies on surplus coking coals which enabled the delivery of these coals in other countries below the listed f.o.b. mine prices. In addition, there was an overall decrease in demand for metallurgical coal. Increased competition from British coal is now being experienced as a result of the devaluation of the British pound. In some instances import quotas limit the extent of United States participation in foreign coal markets.

The protestants estimate that the increase on bituminous coal moving by rail to the ports, based on 1967 shipments of 34.5 million tons would total $5.1 million. It is argued that if as little as 1.2 million tons of export coal traffic were lost, it would offset the additional revenues sought by the carriers and would also mean a loss of $13.2 million

to the U.S. balance of payments. In Ex Parte No. 256, the respondents did not apply the general increase on export coal, the justification, in part, being that it would serve the national interest because of the contribution of such traffic to the balance of payments, 329 I.C.C. 854, 934. In this proceeding the respondents expect no loss of export traffic and assert that, to the extent that the higher freight rates are borne by the foreign receiver, it will improve the balance of payments. In any event, our conclusions as to the lawfulness of the proposed increases cannot depend upon their collateral impact on the balance of payments. Additional operating revenues are needed by respondents and this traffic should bear its fair proportion of the burden.

Overseas exports of coal since 1959 have fluctuated yearly between 24 million and 34 million tons. Nearly 95 percent of this traffic moved through piers in the Hampton Roads area. At these [733] piers and at Baltimore, the railroads have made substantial improvements in the facilities and invested in numerous additional freight cars to handle the coal movement. The charge assessed by the railroads for dumping the coal into vessels at Hampton Roads, 4½ cents per net ton, has not changed since 1910. No change is to be made under the present proposal. The volume of coal exported has declined in recent years notwithstanding that the rates have not been increased since 1960. The increase at that time was only 1.6 percent over the 1957 rate. Since no increase in rates on export coal was made under Ex Parte No. 256, the respondents assert that the increase here in issue will result in a rate level only 5.5 percent over the 1957 level. They point out that the greatly increased capacity of

many new ocean vessels requires the accumulation of many more loaded cars, with consequent greater car detention and increased costs to the railroads.

While it appears true that any increase in the delivered price of coal will tend to reduce its competitive position in foreign markets, it cannot be found that the differences due to the rate increase here in issue are as significant as claimed, or that United States coal would not be underbid whether or not the increase is applied. There is evidence that the quality of United States coal is such as to make it desirable, if not necessary, and that long-term contracts covering some 15 years in the future have been made. Some contention is made with respect to differences in rates charged on export coal and those charged on coal moving to the piers for coastwise transportation. A general revenue proceeding, however, is not appropriate for determination of issues of relationships of this nature.

Generally the trainload rates increased as here proposed are at the level of single car rates of 16 to 20 years ago. To a number of electric utilities in the Northeast, the respondents show that the annual cost of the proposed increases would approximate less than 0.3 percent of the utilities' operating revenues.

The respondents do not share the views of most protestants that the proposed increases will result in diversion of rail coal to motor vehicle or barge, or to conversion of coal powered plants to oil or gas, or to increased use of mine-mouth generating plants and plants powered by nuclear energy. The respondents maintain that coal traffic, like all other traffic should bear a fair proportion of the needed increased revenues. To the extent that specific instances appear where rate reductions are needed to

counter real traffic losses, they say adjustments will be made. [734] There is evidence that the construction costs of nuclear-powered plants have risen appreciably and some doubts exist as to the future investments necessary to produce high-capacity plants of this type. Costs of other forms of transportation, and of competing fuels are also increasing. Technological improvements, and the ability of electric power producers to connect power lines so as to utilize the most economical sources of supply provides no basis for excluding coal from sharing in the increased costs of transportation.

The evidence is not convincing that freight rates on bituminous coal are a major factor in decisions to invest in nuclear-powered plants. We are not persuaded that the rate increases here proposed will materially influence decisions to be made as to the establishment of mine-mouth electric generating plants. While the alternate use of coal, gas, or oil, according as price and availability dictate, will probably be influenced to some extent by any change in the price of delivered fuel, prices of competing fuels are also subject to cost increases. Should competitive situations arise, appropriate adjustments can be made by producers and carriers. That conditions exist which permit such situations to develop furnishes no ground for exempting coal from bearing an appropriate proportion of the increased revenues shown necessary.

*Iron ore.*—The railroads propose to increase their line-haul rates on iron ore (including pellets) 5 percent, maximum 20 cents per ton. The charges for handling iron ore at upper and lower Great Lakes ports are proposed to be increased 6 percent except that no increase is proposed for handling iron ore (not ground or hydrated) or iron ore

sinter from hold to rail of vessel at lower lake ports. They also propose to increase by 6 percent the charges for ground or dock storage of ores at Lake Erie ports.

Iron ore is an important commodity to the respondents, both from a tonnage and a revenue standpoint. In 1967, class I railroads in the United States originated 92.8 million gross tons of iron ore, from which they received total revenue of $204.5 million, and average revenue per gross ton of $2.20. In 1967, class I railroads in the eastern district, including the Pocahontas region, terminated 46.5 million gross tons, from which they derived revenue of $109 million, an average per gross ton of $2.35. The tonnage of iron ore carried by all class I railroads in 1967 was 6.05 percent of the total freight carried and the revenue therefrom represented 2.24 percent of the total freight revenue. The tonnage [735] of iron ore transported by the eastern district railroads in 1967 was 6.28 percent of all freight tonnage and produced 3.16 percent of the revenue received from all freight.

The principal iron ore movement within eastern territory is ex-lake iron ore from lower Lake Erie ports to steel mills south thereof. Other important movements are the import movements from the eastern seaboard and movements from mines within eastern territory. It is estimated that the proposed increases will produce approximately $6 million for the eastern railroads on an annual basis and will reflect an average rate increase of approximately 4.8 percent.

The proposed increases within eastern territory are opposed by numerous steel companies which contend that the present rates on iron ore are excessive and that any further increase cannot be justified. No specific reference is made to the rates on imported iron ore nor to the level

of the all-rail rates wholly within eastern territory. Objection is made to the increase in the rates on ex-lake iron ore from Cleveland, Ohio, to Weirton, W. Va., on the grounds that the existing rates do not reflect the highly favorable transportation conditions and disproportionately high net revenues from this low-grade commodity. Most iron ore received at Weirton comes from two sources, the Michigan-Minnesota ranges and Labrador. It is claimed that the present volume rates as increased under Ex Parte No. 256 yield revenue per gross ton-mile of 19.8 mills on the Lake Superior ore and 20.3 mills on the Labrador ore. The proposed increases would increase these earnings to 20.8 and 21.2 mills per gross ton-mile, respectively.

The respondents compare the single-car rates approved by the Commission in Ex Parte No. 223 (Sub-No. 3) *Increased Rates On Iron Ore*, 313 I.C.C. 549, with the present volume rates. In Ex Parte No. 223 we noted that the ex-lake iron ore movement reflected volume transportation conditions. The ex-lake iron ore rate to Weirton at the Ex Parte No. 223 level is $2.39 per gross ton on both the Lake Superior and Labrador ores. The present volume rates on iron ore traffic which include the increases under Ex Parte No. 256, are $2.24 on traffic receiving a prior regulated movement by common carrier within the United States and $2.29 when such movement has not occurred. Under the proposed increases these volume rates will become $2.35 and $2.40, respectively. The former is 4 cents under and the latter is 1 cent over the level of the rates found not to exceed the maximum of reasonableness 7 years ago.

[737] Opposition to the increases in iron ore rates in western territory is directed primarily to the movement

from the Lake Superior region and, more particularly, to the movement to the upper lake ports. The latter movement, in 1967, exceeded 42 million tons, of which two-thirds moved from Minnesota origins and one-third moved from Michigan origins. In addition, there is an all-rail movement in western territory from the Lake Superior region ranges and a substantial all-rail movement from other origins in that territory.

The seven common carrier railroads which transport iron ore from the Lake Superior district to the upper lake ports are: Chicago and North Western Railway Company (CNW); Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Milwaukee); Duluth, Missabe and Iron Range Railway Company (DM&IR); Great Northern Railway Company (GN); Lake Superior & Ishpeming Railway Company (LS&I); Northern Pacific Railway Company (NP); and Soo Line Railroad Company (Soo Line). These carriers propose to apply the full 5-percent increase, maximum 20 cents per gross ton, on all-rail iron ore, including pellets, moving from that region. The four Minnesota ore-carrying railroads (DM&IR, GN, NP, and Soo Line) seek the full increase on iron ore and iron ore pellets moving from Minnesota ranges to upper lake docks, as well as to all-rail destinations. They also seek the 6-percent increase in dock handling charges at upper lake ports. However, the Michigan ore-carrying railroads, (CNW, Milwaukee, LS&I and Soo Line)[2] do not propose to take the proposed increases on iron ore moving from Michigan ranges to upper lake docks in Michigan.

In 1967, iron ore comprised 25.6 percent of the total tons carried and 5.6 percent of the total gross freight revenues

2. The Soo Line serves both the Minnesota and Michigan ranges.

of the seven upper lake carriers. The gross freight revenue derived from the movement of iron ore by all western district carriers in 1967 was slightly over $87 million, of which $55.5 million or 64 percent accrued to the upper lake carriers.

The respondents refer to the decline in rates of return of the seven upper lake carriers as evidence of the need for additional revenues. The average rate of return for these seven carriers was 3.37 percent in 1966 and dropped to 1.31 percent in 1967. This is compared with declines of from 4.03 percent to 2.75 percent for western district railroads and from 3.90 percent to 2.46 percent for all class I railroads in the United States. The respondents contend that the present earnings trends of both the upper lake ore carriers and the western district carriers, as a whole, dis- [736] close a need for additional revenues which can be met only if iron ore, which comprises a substantial portion of their tonnage, contributes to their revenue requirements. They take the position that the Commission should consider the revenue needs of all the carriers in making its evaluation of the sought increases, but that, in any event, whether the revenue needs are considered from the standpoint of the Minnesota carriers, the upper lake region carriers as a group, or the western district carriers as a whole, the proposed increases on iron ore are vitally and urgently needed.

In 1967, the four Minnesota ore-carrying railroads transported over 28 million tons of iron ore from the Minnesota ranges to the upper lake docks. DM&IR handled 58.1 percent of the shipments, GN 39.3 percent, NP 1.5 percent, and Soo Line 1.1 percent. DM&IR derives over 90 percent of its tonnage and 80 percent of its freight

revenues from iron ore. Respondents assert that while DM&IR was considered a relatively prosperous carrier in the early 1950's, its rate of return has been generally low since 1955, averaging 3.73 percent in the period 1956-60, 3.39 percent from 1961 to 1965, an increase to 6.71 percent in 1966 and a decline to 4.30 percent in 1967.

Third-quarter earnings of the DM&IR for 1968 are below those for 1967, and 9-month earnings in 1968 approximate those for 1967. Its forecast for the calendar year 1968, with the authorized 3 percent interim increase, indicated a rate of return of 4.20 percent. For the constructive year, based upon the estimated 1968 level of traffic and with the full increases sought, the rate of return would be 4.59 percent. Dock tonnage through August 1968 exceeded that for the same period in 1967 by approximately 123,000 tons. However, the respondents insist that the total remains substantially below the original forecast of a 1,151,000 ton increase in dock tonnage in 1968 over 1967, upon which the rate of return of 4.29 percent for the calendar year 1968 was predicated.

Great Northern's rate of return of 2.08 percent in 1967 was the lowest in the last 17 years. With the interim increases authorized, its rate of return for the calendar year 1968 is estimated at 2.96 percent and with the full increases sought, its rate of return for the constructive year would be 3.39 percent. Its net railway operating income for the first 9 months of 1968 barely equaled that for the same period in 1967. Through August 1968, GN handled 8.2 million gross tons of iron ore over its Superior dock compared to 7.3 million gross tons during the same period in 1967. It predicted, however, a decline in pellet movement in the latter [738] part of 1968 because of the shutdown of a pellet plant and that its total 1968 ore tonnage would approximate that for 1967.

In support of the reasonableness of the proposed increased rates, the respondents point out that the 1939 level of iron ore rates from the Missabe Range to upper lake ports found reasonable in *Butler Bros. v. Great Northern Ry. Co.*, 276 I.C.C. 679, has borne an aggregate increase of only 68.1 percent while the same iron ore moving beyond lower lake ports has borne an aggregate increase of 128.1 percent and other commodities moving in the West have borne increases ranging from 106 to 131 percent. They also point to reductions recently made from the normal level of upper lake iron ore rates in cases where the railway company is not required to perform certain switching services at origins or at upper lake docks, and on new movements at annual volume minima. Great Northern has invested $6 million and DM&IR $5 million in new pellet loading and unloading facilities to accommodate this movement. Additionally, respondents show that the rail charges of the Canadian National Railway Company on iron ore from the Steep Rock Mining District in Ontario to its upper lake dock at Port Arthur, Ontario, for transshipment by lake vessels, are substantially higher than those to United States upper lake ports for comparable hauls. Also from eastern Canadian producing origins, the rates, including agreed charges, are likewise substantially higher than upper lake rates on iron ore, including pellets.

The protestants maintain that of the total tonnage of iron ore moving to Great Lakes destinations, the percentage moving from Minnesota docks has been steadily declining. From a high of 43.2 million tons and 58.9 percent of the total shipments of iron ore into the Great Lakes in 1960, Minnesota railroad dock shipments in 1967 declined to 28.3 million tons and 35 percent of the total Great Lakes shipments. While Minnesota dock shipments continue to decline,

Canadian and other foreign ores are increasing their share of the market. In 1960, 3.7 million tons of Canadian iron ore was shipped over Canadian docks in the Lake Superior district, compared to 4.9 million tons in 1967. Eastern Canada and other foreign sources shipped 3.6 million tons into the Great Lakes area in 1960 and in 1967 such tonnage had increased to 14.6 million tons, representing 18.1 percent of the total market. In rebuttal, respondents show that in 1966 protestants shipped 33 million tons of iron ore from foreign sources as opposed to only 14 million tons from Michigan and 18 million tons from Minnesota.

[739] The protestants also claim that producing areas in West Africa, Australia, and South Africa are major sources of foreign competition. However, the record indicates that neither French nor British West Africa have exported iron ore to the United States since 1960; no iron ore has been imported from South Africa in the last 3 years; Australian ore exported to the United States in 1967 amounted to only 1,023 tons; and the 3 million tons of Liberian ore shipped to the United States in 1967 was 10 percent less than the 1966 tonnage.

Respondents assert that the proposed increases were arrived at after foreign competition was taken into consideration. The combined effect of the increases in iron ore rates approved in Ex Parte No. 256 and those proposed herein, they urge, equalizes the treatment of Lake Superior iron ore and foreign import ore and continues the railroads' policy of keeping the increases on Lake Superior region iron ore competitive with increases on import iron ore. For example, they show that to Pittsburgh, Pa., import iron ore would be increased to a total of 30 cents and Minnesota iron ore would also be increased to 30 cents for direct shipping ore and 29 cents for iron ore pellets. Respondents'

comparisons are of line-haul rates only, due to their inability to obtain the contract dock handling charges made on import ore at Atlantic ports.

Protestants regard as negligible the small tonnages handled by the NP and Soo Line in 1967 and argue that for all practical purposes the DM&IR and GN, which together handled 97.4 percent of the traffic in 1967, are the only railroads transporting iron ore from the Lake Superior region to upper lake ports that would participate in any increased revenues derived from these movements. They contend that the financial condition of the DM&IR and GN clearly establishes that increases in the line-haul rates and dock handling charges on iron ore from the Minnesota mines to the upper lake ports are not justified. They also point out that the DM&IR is a wholly owned subsidiary of the United States Steel Corporation, the principal shipper over that railroad and a principal competitor of protestants. While, as previously indicated, the financial position of the DM&IR appears to be somewhat better than that of the GN, the current rates of return for these carriers cannot be described as excessive. Furthermore, we must also consider the revenue needs of the NP and Soo Line, which also participate in this traffic. We have repeatedly held that it would be unfair to deny needed increases in revenues on iron ore on the ground that some of the carriers participating in the traffic might [740] not need them. *Increased Freight Rates, 1958*, 302 I.C.C. 665, 689; 304 I.C.C. 289, 332; *Increased Freight Rates; 1967*, 329 I.C.C. 854, 929. The record in this proceeding shows that all of the Minnesota ore carriers are in need of the proposed increases on this traffic.

Nor does the fact that the Michigan ore carriers have flagged out of the proposed increases constitute grounds.

for denying the proposed increases to the Minnesota ore carriers. The record indicates that the Michigan carriers joined in the publication of the proposed increases but subsequently decided to forego them because of carrier competition. It may be that an increase in the rates from the Minnesota mines and not from the Michigan mines will have competitive ramifications and alter previously existing relationships; but that fact, however, is sufficient to deny the Minnesota iron ore carriers the proposed increase.

The record also indicates that much of the Canadian iron ore competition is provided by protestants themselves and that 13.8 million tons, shipped from the Michigan mines in 1967, was also shipped by protestants. As to the contention that the proposed increases will enhance competition from two private rail carriers serving pellet plants in Minnesota, it is reasonable to conclude that such carriers have had and will have cost increases the same as the respondents.

The upper lake dockage and handling charges are proposed to be increased 6 percent. The 19.5 cents per gross ton charge at Duluth and Superior, considered typical, would be increased by 1.5 cents. No increase was sought in these charges in Ex Parte No. 223; and in Ex Parte No. 256 an increase of only ½ cent or 2.5 percent was sought. In view of the increased operating costs experienced by the railroads in the intervening years, the proposed increase of 6 percent does not appear to be excessive.

Arguments concerning the alleged difficulties in the clerical or administrative handling of refunds of ore charges established in Ex Parte No. 256 were considered and disposed of in that proceeding. Nothing is presented in this record to warrant a different conclusion.

*I.C.C. Final Order*

Two upper lake iron ore producer-shippers oppose the proposed increases in the all-rail rates on iron ore from mines in Minnesota and Michigan to destinations in the Chicago, Ill., district and to Granite City, Ill., as well as those on iron ore pellets from Pilot Knob, Mo., to Granite City. In 1967, approximately 1.2 million tons of iron ore moved all-rail from Minnesota-Michigan mines to Indiana and Illinois and some 100,000 tons have moved from [741] Pilot Knob to Granite City since May 1968, when production of pellets at Pilot Knob began. The protestants contend that this traffic, unlike other all-rail iron ore traffic in the western district, is faced with intense competition from foreign ores and the competition of a Minnesota private rail carrier producer.

The all-rail rates from the Michigan-Minnesota origins generally reflect economies incident to volume movements and are well below maximum levels; and the multiple-car rates from Pilot Knob to Granite City represent a substantial reduction under the single-car rates. The private rail carrier producer has costs that are subject to inflationary trends like those of the railroad respondents. The substantial increase in the all-rail movement from Minnesota-Michigan origins, from 435,000 tons in 1961, to over 1 million tons in 1967, indicates that the proposed increase will not appreciably slow the potential growth in the all-rail movement of iron ore.

An iron ore producer at Wabuska, Nev., opposes the proposed increase on the ground that any increase in the rail cost of moving its iron ore from its Nevada mine to Pittsburg, Calif., for export will increase substantially its overall cost and impair its ability to survive in the Japanese market because of Australian ores selling at a lower landed cost in Japan. All export ore, as well as

domestic ore, is subject to the proposed increases. Export ore to Japan has increased in the last 10 years to a peak of 3.6 million tons, of which protestant's movement is about 10 percent. No persuasive reason has been shown for exempting export iron ore traffic from the proposed increase.

Based upon all the evidence of record, we conclude that the increases proposed in the rates on iron ore will not result in rates and charges which exceed maximum reasonable levels or will significantly divert the traffic to other means of transportation; and that the iron ore traffic can and should bear the proposed increases.

*Pig iron, iron and steel scrap.*—By our order entered November 25, 1968, we lifted the suspension of most of the tariff schedules under investigation and permitted the increased rates and charges to become effective; but, in view of the situation to be discussed next, we retained under suspension pending further consideration, master tariff item 845, pig iron, and iron and steel scrap. Rates on these commodities are proposed to be increased 25 cents per ton, net or gross, as rated, on rates not exceeding $8 per ton, and 5 percent on rates exceeding $8 per ton. This compares with the [742] increase of 5 percent, maximum 20 cents per ton, proposed on iron ores. In Ex Parte No. 256, we held that the competitive relationship between iron ore and iron and steel scrap for use in steel mills required that the increase on scrap not exceed that applied to ore. In the present case the respondents have argued that our findings in the prior case were erroneous and that no justification exists for requiring increases on scrap to be related to those on ore.

In Ex Parte No. 256, producers of pig iron did not present evidence respecting their position in this controversy.

They have done so in the present case, however, and have shown, without apparent contradiction by respondents or other protestants, that pig iron does compete directly with scrap as input for steel furnaces. The respondents have, in this case and in prior increase cases, published similar increases on the two commodities. We agree that, in bearing some share of the needed additional revenues, these two commodities should be treated alike. Pig iron producers argue that, since pig iron was permitted to be increased in Ex Parte No. 256 to a greater extent than scrap, any increase allowed in this case should not result in a total increase on pig iron greater than the total increase on scrap produced by the Ex Parte No. 256 increase plus that permitted herein. These protestants did not, however, seek reconsideration of our order in Ex Parte No. 256 and it is manifestly impractical to review and attempt to revise past rate adjustments in this proceeding.

As in prior proceedings, the protestants call attention to the public interest in removal and utilization of scrap and the importance of maintaining a viable industry dedicated to this task. The commodity involved is that referred to as obsolete scrap, comprised of old automobiles, appliances, railroad equipment, demolition material, et cetera, which constitutes about 23 percent of total ferrous scrap consumption. The remainder is comprised of home scrap and prompt industrial scrap, produced within the steel mill and steel fabrication industries, which flows directly back into the steelmaking process. Obsolete scrap is purchased to supplement this supply as needed. The protestants assert that the obsolete scrap industry is depressed, with prices per ton at a very low level. The respondents contend, however, that between 1961 and 1966 there was a substantial increase in the amount of scrap moved by rail, that the

price of scrap fluctuated considerably, and that no increase in rail rates were applied but, rather, a number of reductions were made. They argue that prices of obsolete scrap are [743] governed by the extent of activity in the steel industry and do not depend upon freight rates.

Pig iron producers, while objecting to any increase in rates, call attention to the intensive competition of scrap iron and the need for similarity of rate treatment. These protestants serve generally nonintegrated steel mills and foundries, which do not produce their own hot metal supply. Prices of pig iron are substantially higher per ton than scrap, which adds to their marketing problems. The industry is said to be suffering from a cost-price squeeze and a number of pig iron plants have discontinued operations, without replacement, in the last 5 years. The economic circumstances which these protestants encounter is not substantially different from those affecting the respondents and many other protestants. We find that both scrap iron and pig iron should bear some share of the additional revenue needs of the railroads.

In the steelmaking process both scrap iron and pig iron compete as major components of the charge in the furnace. Integrated steel producers supply their pig iron needs by manufacture within their own complex. The primary component of the charge in the blast furnace, which produces pig iron, is iron ore. A substitute for both pig iron and scrap is high grade iron ore which has been subjected to other processes which increase its iron content to well over 90 percent. Thus, while the rates on these various commodities are not necessarily related, we are of the opinion that, under current conditions, and where the issues involve the increase in contribution necessary to meet a revenue

need, the burden should be imposed in substantially similar fashion. We find that the increases on pig iron and iron and steel scrap, item No. 845 of the master tariff, should not exceed those applied to iron ores, item 1060.

*Semifinished iron and steel.*—Rates on semifinished iron and steel are proposed to be increased 5 percent, minimum 2 cents per 100 pounds or 40 cents per ton, net or gross. Included are items such as billets, blooms, ingots, sheet bars, slabs, slab breakdowns, skelp, and coiled rods. A number of processors and fabricators oppose the increase, asserting the possibility of diversion or traffic, and contending that the rates produce revenue well in excess of out-of-pocket costs. They also assert that any increase makes more difficult the problem of competing with imported commodities. Many reduced incentive rates have been provided for the movement of these commodities and the respondents contend that the substantial interplant movement of semifinished [744] steel is not dependent upon the transportation rates to the extent claimed by protestants. While the 2 cents per hundredweight minimum produces increases in excess of 5 percent on very short hauls, it reflects the recognized higher terminal costs which have greater impact on such movements. Generally rates for these commodities are at a low level, ranging from 7.2 percent to 12 percent of first class. The revenue per ton on semifinished steel in 1965 was lower than in 1950. The proposed increase is generally less than 1 percent of the sales price of finished steel and will not, in our opinion, have any significant impact on competition with imported products. We find the proposed increase on semifinished iron and steel just and reasonable.

*Aluminum ores and products.*—On aluminum ores, including bauxite and alumina, the increase proposed is 15 cents

per ton, net or gross, as rated, up to and including $6.50 per ton and 25 cents per ton, net or gross, on rates above $6.50 per ton. On aluminum ingots, billets, pigs, other primary metal products, and mill products the increase proposed is 5 percent, minimum 2 cents per 100 pounds or 40 cents per ton, net or gross, as rated, and the increase proposed on aluminum foil is 5 percent, minimum 2 cents per 100 pounds.

It is the position of the aluminum industry that respondents have neither justified their need for a general revenue increase, nor have they proved that the proposed increases are reasonable and free from unjust discrimination, and undue preference or prejudice. The aluminum industry is one of wide plant dispersion which generates a heavy demand for long-haul transportation at all stages of the production process. Aluminum is a growth industry and, to support its continued growth, it must compete in many markets with other metals and especially with iron and steel. Aluminum is increasingly used as an alternate for steel in many markets, including the container market, where aluminum cans are being used for beer, frozen citrus concentrates, and motor oils. Iron and steel and aluminum are significant competitors. The protestants assert that the proposed general increase in the form of a percentage increase disrupts competitive relationships and will widen the rate differential between aluminum and steel.

The increases are opposed not only on the grounds of their inflationary effect, but also because those proposed for the aluminum industry are greater than for the iron and steel industry. In this regard it should be noted that the increases sought on aluminum products are the same as those sought on iron and steel products. As to the claim that respondents are discriminating in their [745] treat-

ment of aluminum ore as compared with iron ore, transportation characteristics are substantially different. Iron ore moves in open-top cars in short hauls, whereas bauxite and alumina must be protected from moisture and are transported in covered hopper cars. No correlation has ever existed in the rate levels between alumina and iron ore. The fact that the sites chosen by the aluminum industry requires extensively long transportation hauls involve circumstances which are beyond the control of respondents. It is apparent that the rate structure has not hindered development. The aluminum industry has expanded sixfold since 1945.

The respondents are fully aware of the competitive problems confronting them. They have indicated that should the proposed increases place any particular movements in jeopardy, action to retain the rail movement will be taken. We find the proposed increases to be just and reasonable.

*Copper products, lead and zinc ores and concentrates.*—The copper producers oppose not only the proposed increases of 5 percent, minimum 2 cents per 100 pounds, or 40 cents per ton, net or gross, as rated, on primary copper smelter products, but all proposed increases on the grounds that respondents have neither shown an overall revenue need, nor have they justified with necessary cost-revenue comparisons, or otherwise, the varying increases proposed on different commodities. The movement of primary copper smelter products is substantially long-haul traffic at very high loadings and revenues and profits per car. On much of the traffic, a double haul is involved. Copper produced 185 percent more revenue per car in 1965 than the average of all carload traffic.

Cost-revenue comparisons submitted by the producers indicate that contributions averaged 40 percent above the con-

tributions made by the average of all traffic. Based on projections of substantial growth, copper will be making even greater contributions in the future without any rate increase. It is contended that respondents have failed to consider the impact of the recent copper strike and its effect on copper producers who are now being asked to provide increased revenues for the railroads based upon the railroad claim of less favorable earnings during an abnormal period.

Current copper prices are no higher than those in effect in 1964. It is claimed that no evidence was submitted to rebut the showing of extremely high profitability per car or per ton being enjoyed by respondents on the present level of copper rates. It is further claimed that respondents have submitted no data showing that the [746] cost of service on primary copper smelter products had been increasing, and that the proposed increases thereon are totally unrelated either to the cost of service or to the relative changes in cost of services resulting from alleged wage or price increases.

This group of protestants alleges that the proposed increases are inherently discriminatory, because different percentage increases are being placed on different commodities, all of which are receiving rail transportation from the same carriers.

The lead and zinc industries contend that the respondents have failed to justify their proposed increases on the basis of cost increases or revenue needs; that the increases proposed on lead and zinc are unjust and unreasonable because of import competition and a depressed price situation as well as the more favorable treatment accorded competitive metals; and that cost-revenue comparisons on lead and zinc show that these commodities are presently contributing

more than a fair return to the respondents. The same increases as proposed on aluminum products are proposed on primary zinc and lead smelter products. However, unlike the stated increases proposed on aluminum ores, the proposed increases on zinc and lead ores and concentrates are 5 percent, except to, from, or within southern territory, where the increase proposed is 4 percent without a maximum, despite the fact that the Commission in previous increase proceedings held that holddowns were necessary for competitive reasons. See *Increased Freight Rates, 1951*, 284 I.C.C. 589, 656.

It is claimed that the lead and zinc industries are confronted with severe competition from imported metals. The prices of lead and zinc are set by the market. Thus, these industries cannot pass along either their own wage increases, or those proposed by respondents. The current price of lead is 1.5 cents per pound less than it was in 1967, and zinc is 0.34 of a cent less per pound. In view of the showing that the present rates on lead and zinc are yielding an above-average return, the protestants assert that the increases proposed on lead and zinc have not been justified.

We have previously made findings as to the overall general revenue needs of the respondents. The copper producers, while alleging discrimination, have not shown with any degree of specificity that the selective increases proposed will create either undue preference or undue prejudice. More than bare allegations of discrimination are needed to warrant condemning the increases found to be critically needed to offset, in part, the increased operating costs of respondents. Neither can the relatively low [747] costs and high revenue contributions shown by protestants, taken at face value, be used as a basis for condemning the proposed increases on nonferrous commodities. Such com-

parisons, standing alone, are an insufficient basis for finding that the proposed increases will result in rates that exceed a maximum reasonable level. As to the import competition referred to by the lead and zinc industries, respondents have indicated that, where warranted, adjustments will be made to protect their rail movements.

*Ferro alloys and spelter.*—The increase proposed on these commodities is 5 percent, minimum 40 cents per ton, net or gross, as rated. One of the protestants contends that the proposed increase applied on raw materials used in the manufacture of steel creates undue prejudice by placing a greater burden on such raw materials than on commodities generally, and by making higher rate levels for shorter hauls. It does not oppose a fair and equitable increase, but believes a fair increase should not exceed 3 percent. Another protestant objects to the 40-cent minimum because of its effect on short-haul movements and suggests that removal of the minimum would produce an equitable increase. Both protestants show that the proposed minimum on their short-haul movements results in a somewhat higher percentage than would be applied on long-haul movements. Aside from the mere allegation of discrimination, no evidence was submitted to show a violation of the act. Increased expenses fall most heavily on terminal services which make up a larger proportion of the cost of handling short-haul traffic. In the circumstances the proposed increase is found just and reasonable.

*Nonferrous scrap.*—The proposed increase on nonferrous scrap is 5 percent, minimum 1 cent per 100 pounds, or 25 cents per ton, net or gross, as rated. Protestants allege that the proposed increases are unjust and unreasonable, discriminatory and will be self-defeating in that the

increases will reduce the scope of marketing areas, destroy the marginal, small dealer and divert rail movements to motor carriage. Nonferrous scrap materials shipped in quantity are mainly in competition with virgin metals. Nonferrous scrap has many favorable transportation statistics, including regular movement, favorable packaging, use of the same cars inbound and outbound thereby eliminating switching, heavy loading, and absence of need for special services. The present level of rates on scrap, without the proposed increases, they say, is amply compensatory.

[748] There is a wide range in the prices of the various types of nonferrous scrap. A comparison of various catagories thereof, February 1963 with March 1968, indicates an average increase of 59.8 percent. Thereafter, prices have dropped but still remain at levels above those in March 1963. Seventy-five percent of the movement of nonferrous scrap was in official territory in 1966, for average hauls of 441 miles, and 1,180 miles, respectively, within, and from and to that territory. These relatively long average movements indicate that there is a widespread demand for scrap. Beginning in 1963 in official territory incentive rates were established on scrap with minimum weights ranging from 40,000 to 100,000 ponnds. Within the South rates are subject to minimum weights of 40,000, 60,000, and 80,000 pounds. Presently nonferrous scrap is being handled at rate levels lower than those in effect in 1963.

Although protestants allege that the proposed increases will create discrimination, no probative evidence has been submitted to show undue preference or prejudice, or that the proposed increases, except as hereinafter provided,

applied to the present level of rates, would result in rates exceeding a maximum reasonable basis. The proposed minimums of 1 cent per 100 pounds, or 25 cents per ton, net or gross, as rated, as set forth in item 840 of the master tariff, are patenty inconsistent. The minimum which will be allowed will be 1 cent per 100 pounds, 20 cents per net ton, or 22 cents per gross ton.

*Radioactive materials.*—The 10-percent increase proposed on these commodities, which include irradiated fuel elements, uranium florides, oxides, and salts, and radioactive waste materials is opposed by the U. S. Atomic Energy Commission and the Westinghouse Electric Corporation. It is claimed that the stringent packing and safety requirements imposed on these commodities have resulted in a superior claim record and that in the event of a nuclear incident during transport the respondents under the Price-Anderson Act are provided substantial indemnity by the Government. It is further alleged that radioactive materials are in competition with coal and fuel oil, both of which are accorded lesser increases. Because of the extraordinary nature of this type of traffic, the handling of which requires unusual precautions to be taken, including the special cleaning of cars to prevent the possibility of contaminating other traffic, and in view of need shown for additional revenues, an increase greater than that accorded other traffic is warranted.

[749] *Farm products.*—The United States Department of Agriculture, regulatory agencies of many States, and various organizations representing agricultural interestes oppose increases on farm products, and on farm supplies such as fertilizers and animal and poultry feeds. Our attention is called to depressed conditions in agriculture, the con-

stantly rising costs of supplies used by farmers, and the inability of the farmer to increase the prices received for his products. We recognize the problems faced by the agricultural community and the relatively low level of net farm earnings; but we must also recognize that a sound and adequate transportation industry is equally essential to the economy of the Nation, and, indeed, to the welfare of the farmer as well. Net realized income of farm operators increased from $10.7 billion in 1957 to $14.5 billion in 1967, while railroad net income in the same period declined from $737 million to $555 million. Between 1959 and 1967 the index of prices received by farmers increased only 4 percent but, on the other hand, the railroad freight rate index for farm products declined between 1959 and 1966 by 9 percent. If all increases are taken on farm products as proposed, the average level of rail rates will be lower than in 1959. We cannot accept, as a general proposition, that the agricultural industry should not contribute some portion of the needed additional revenues.

*Grain, grain products, feed, and feed ingredients.*—By our order entered November 25, 1968, we lifted the suspension of most of the tariff schedules under investigation and permitted the increased rates and charges to become effective. In view of the complexity of the grain rate structure and the diverse application of the proposed increases by the respondents, we retained under suspension pending further consideration, master tariff item 515, grain and certain grain products. Rate increases proposed on these commodities are generally 6 percent, except that within the West and the western part of Illinois Freight Association territory they are 7 percent, and to and within the South, excluding flour and meal, they are based on a scale

reflecting about 5 percent.[3] The increases proposed on buckwheat, oat, rye, and wheat meal and [750] flour to points in the South are 6 percent, and within the South they are 3 percent. Several special adjustments are proposed, generally by particular railroads within the West, which are to be effected by waiving the increases or exchanging them for prior increases. Because of these special adjustments, the increases in the West are said to approximate 3 percent over the X-256 level.

The special adjustments in the West are accomplished by publication in connecting link supplements to the grain and grain products tariffs. They provide, in effect, either that the 7-percent increase will not apply, that it will not apply on certain commodities, or that it will apply in place of prior general increases. The Chicago and North Western Railway Company (CNW) did not increase its rates under either Ex Parte No. 256 or Ex Parte No. 259 and, to remain competitive, other railroads serving the same part of western territory[4] also waived the increases.

To the extent that other railroads did not take the increases at particular points they necessarily sacrificed their increases at intermediate points. Fourth-section departures called to the attention of the carriers in this proceed-

3. The rates per 100 pounds are increased:
0.5 cents on rates not exceeding 20 cents.
1.0 cent on rates over 20 cents but not exceeding 30 cents.
1.5 cents on rates over 30 cents but not exceeding 40 cents.
2.0 cents on rates over 40 cents but not exceeding 60 cents.
3.0 cents on rates over 60 cents.

Similar increases are provided for rates expressed in amounts per ton.

4. Generally north and east of the Missouri River and on and south of the line of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company from Minneapolis, Minn., through Aberdeen, S. Dak., to the Missouri River.

ing by the Chicago Board of Trade are being cleared. In some instances competing railroads have elected to lose traffic to those not taking the increase in preference to surrendering the increased revenue at intermediate points. Elsewhere, to maximize revenue, the competition has been met at certain points and not at others. The CNW, for example, would not apply the increases on grain from Oakes, N. Dak., whereas the Soo Line Railroad Company (Soo) would apply them from that point. Protestants, including the Nebraska State Railway Commission, Montana Commissioner of Agriculture, and the Public Utilities Commission of the State of South Dakota, contend that it is discriminatory for some railroads in a territory to take the increases while others in the same territory do not. A finding of discrimination, however, may not be based on a mere difference in rates. Rate differences between various origin areas cannot be appropriately considered or adjusted in a general increase proceeding. *Increased Freight Rates, 1967*, 332 I.C.C. 280, 300.

In most instances, the western lines propose to increase the local or gathering rates, at the Ex Parte No. 223 level, by 7 percent from, to, and between stations west and south of the area [751] served by the CNW. Excepted therefrom are rates published by the southwestern lines between points in the eastern part of western territory on grain and wheat flour, which are not increased. The intermarket proportional rates in western territory would be increased 7 percent over the rates at the Ex Parte No. 223 level, except that no increase would be applied in the northeastern part of western territory, and the increase would be applied to rates not subjected to the Ex Parte No. 223 increase in the southeastern part of western territory. The western carriers do not propose to increase export rates

to Gulf and Great Lakes ports, except for the gathering rates in connection with the lake export shipments and the multiple-car rates in connection with Gulf export shipments. These export rates are to be increased to the same extent as export rates to west coast ports, namely, 7 percent over the Ex Parte No. 223 level.

Under the present grain marketing practice, the price received by the farmer is the market price less the local or gathering rate to the market. This, in effect, requires the farmer to bear the transportation cost. The buyer at the first market, who pays the freight charges, uses the inbound billing to set off a part of the total charges if they are based on through rates on grain or grain products. In instances in which the gathering rates are increased, but the through rates are not increased to the same extent, such as the export rates to lake ports, the farmer pays a greater proportion of the through charge but no additional revenue is received by the railroads. Justification for the proposed increases in rates is the need for additional revenue. Application of the increases in a fashion which merely shifts the burden of the freight charges without producing additional revenue is not justified by the record herein. The order entered herein will limit our approval of proposed increases to the extent necessary to prevent application of any increase which has such result.

The protestants contend that the proposed increases will cause diversion of grain traffic to motor and water carriers. The Board of Trade of the city of Chicago calls attention to the 17-percent drop in volume of rail grain in 1967, compared with an increase of 10 percent in motor vehicle movement. This figure includes the corn movement, in which the rails suffered a 9-percent drop against a gain of

13 percent for motor vehicles. North Dakota interests point out that the production of barley has increased but that the railroads have not maintained their participation in the traffic. The United States Brewers Association, [752] Inc., asserts that the increases will accelerate the diversion of the brewers' traffic to private motor carriers, as well as dispersion of production facilities. Evidence of record demonstrates that, in specific situations, traffic diversion of this nature has occurred. While recognizing these possibilities, the respondents assert that appreciable diversion is not anticipated, and that they have and will continue to adjust their rates to meet specific competitive situations. Many variable and interrelated factors affect the movement of this traffic and the choice of the mode of transportation. Higher freight rates may divert some traffic, but will produce additional revenue on the remaining traffic. We cannot find that revenue losses due to possible diversion will exceed or even approach the additional revenues sought and believe that the increases should be permitted unless otherwise not shown to be lawful.

The State of North Dakota, the largest producer of barley in the United States, along with other interested parties, opposes the increase applicable to this commodity. Rates on barley produce higher revenues than those on most grains, and reduced rates have not been established from North Dakota origins as they have been on other grains and from other origins. Feed grade barley competes with other feed grains. The respondents point out that barley uses the full range of railroad services. Basic rate relationships between specific commodities may not be adjusted in this proceeding and the fact that rates yield substantial revenue does not establish that they are unlawful. No reason appears why barley should not assume the same increase as other grains.

Most of the States in the Northeast, including the New England States, New York, New Jersey, Pennsylvania Maryland, Delaware, and Virginia oppose the increases on feed and feed ingredients. There is extensive production of poultry, dairy, and livestock products in this area; but a major portion of the feed must be obtained from other sections of the country. The area also contains major areas of high-density population wherein are located markets for the products of this industry. Rates available to similar producers in the Southeastern States are generally lower and there is active competition between these two areas in markets now reached by both.

The present annual cost of grains and feed ingredients brought into the Northeast is over $807 million. The Eastern Federation of Feed Merchants, Inc., asserts that the proposed increases on these commodities would cost the farmers in this area an [753] additional $2.4 million per year. Production of feed within the area has decreased in recent years. In 1966 it produced over 7.15 million tons, or 14.3 percent of the commercial feed produced in the United States. In 1967 a 6-percent decrease was experienced. Between 1958 and 1968 the number of feed manufacturers and custom mixers in the Northeastern States declined from 432 to 242.

Production of poultry and dairy farm items has been undertaken by larger organizations in recent years, including retail chains and nonfarm cooperatives. A number of egg-producing complexes have been built or are under construction which are able to take advantage of economies of volume and have resulted in the discontinuance of many family-size operations. In 1951, farmers in New York sold $52 million worth of poultry, but only $16 million in 1967.

New Jersey formerly had a surplus of eggs, but now must obtain some of its requirements from other sources. In the 10 years prior to 1968, the number of farmers in Pennsylvania decreased from 116,000 to 77,000. Connecticut has had a 60-percent reduction in broiler production, although its egg production has increased some 25 percent. Maine and New Hampshire have relatively higher freight rates than in the Southeast and express fear that the proposed increases will threaten their poultry interests. Between 1964 and 1967, dairy permits issued in Virginia dropped 213, or nearly 50 percent. The dairy farmer in the Northeast also encounters the competition of dairy substitutes, such as filled or imitation milk. On their behalf it is contended that transportation costs on feeds to the Northeast must not exceed those to the Southeast.

Beginning in 1960, the eastern railroads embarked upon a study of their grain rate structure and, in July 1964, established a reduced scale (772 scale) of rates on corn. In 1967 this scale was extended to grains, feed, and feed ingredients. As pointed out in *Increased Freight Rates, 1967*, 332 I.C.C. 280, 299, this reduction was about five times the increase sought in that case. The railroads applied the full X-256 increase to the 772 scale rates, and propose to apply a 6-percent increase here. In the Southeast, however, specific increases, approximating 5 to 6.3 percent are to be applied. The actual differences in the increases for comparable movements are not substantial. Rates under the 772 scale, after application of the proposed increases, will range from 10.8 percent to 28.6 percent below rates available in 1960. Rates in the South are also affected by severe carrier competition.

[754] The increases proposed on feed and feed ingredients also apply on cottenseed and soybean cake and meal, cotton-

seed oil foods, liquid or solidified, nut or vegetable oil seed cake, and similar articles. The increases on these articles, which are jointly produced with vegetable oils, are opposed by the Texas Cottonseed Crushers' Association and the Institute of Shortening and Edible Oils, Inc. The primary objections are to the use of the STCC tariff, to which we have already referred, and to the application of a different increase on edible vegetable oil than on edible animal oil to be considered in a later section. It is asserted that the increases must be borne by the processors and cannot be passed on to the farm producers of the oil seeds. The increases appear reasonable and no reason is shown why these commodities should be exempted.

The Great Western Sugar Company produces dried beet pulp as a byproduct in manufacturing sugar. It is a feed ingredient and, after consideration of the company's protest, the respondents have agreed to include it in the feed and feed ingredient item of the tariff. In similar fashion, respondents have agreed to group plain wheat flour and self-rising wheat flour so as to take the same increase.

To the extent that rates to port cities have established relationships pursuant to orders of this Commission, as distinguished from relationships existing solely by virtue of voluntary carrier action, those relationships must be retained, and the respondents are expected to protect the lowest level on past shipments.

We conclude that the increases on grain, grain products, feed, and feed ingredients published in the master tariff are reasonable and may be applied as proposed, subject to the described limitation proposed in the connecting link supplements, except that in the West a greater percentage increase may not be made in the rates in effect on June 23,

1968, for the initial rail movement of grain from the country origin to the primary market than the lowest percentage increase made in the through rates in effect on the same date from such country origin to a destination beyond such primary market.

*Sugar beets.*—Increases of 5 percent in rates on sugar beets are opposed by manufacturers of sugar who contend that they have not been justified in relation to the costs of transportation of beets, and that they produce charges which yield more than out-of-pocket costs on shipments by some shippers and less than out-of-pocket costs on shipments by others. We have already [755] pointed out that these considerations are not appropriate in a general revenue proceeding. Further, mere rate differences alone do not establish a violation of the act. The protestants also call attention to the fact that beet sugar competes with cane sugar, many manufacturers of which are located at seaboard points and use imported raw cane sugar. Neither this factor, nor the fact that increases apply both on the sugar beets and the manufactured sugar, furnishes persuasive reason why any exemption from the increase should be ordered.

Great Western Sugar Company points out that its truck movement of beets increased from 22.4 percent of total tonnage in the 1966-67 season to 27.9 percent of total tonnage in the 1967-68 season. It asserts that approval of the proposed increases on sugar beets will result in additional diversion from rail to truck movement. Some diversion is to be expected and it may, as alleged, occur in this instance. We cannot say, however, that the increases will, in total, produce diversion of such magnitude as to nullify the expected additional revenues needed by the respondents.

*Sugar.*—The increase proposed on sugar is 6 percent, maximum 4 cents per hundredweight. Objections registered by certain protestants have to do with rate relationships which, as we have observed, may not be adjusted in this proceeding. The evidence fails to show that the increases will produce unlawful discriminations. As with numerous contentions of this same general nature made by many parties, the appropriate relief is by way of complaint proceedings directed to the specific problem. The Coca Cola Company opposes the increase in sugar rates, asserting that its use of freight cars is efficient and assists the respondents in effective utilization and cost reduction. If the increase is authorized, this protestant expects to readjust the movements to and from its various plants by all forms of transportation so as to incur the least possible costs. The rates on sugar in large cars, with carload minimum of 120,000 pounds, are shown to be lower now than in 1963, and lower than prescribed by the Commission in *Southeastern Sugar Investigation,* 132 I.C.C. 477 (1927).

We find the increases proposed on sugar and sugar beets to be just and reasonable.

*Corn syrup and corn starch.*—The Corn Refiners Association, Inc., protests the proposed 6-percent increase on its two principal products, corn syrup and corn starch. About 85 percent of [756] these products move by rail, mainly in long-haul transportation. The protestants object in particular to increases on corn syrup higher than increases on sugar in its various forms.

The protestants argue that corn syrup and cane and beet sugars are interchangeable for most purposes, and directly competitive in food uses, that the respondents have not justified the disparate treatment in the proposed increases

as between corn syrup and sugar, and that the rate increases for corn syrup should be no higher than those authorized for sugar.

The respondents contend that there has never been a recognized rate relationship between sugar and corn syrup. Corn syrup is produced chiefly in Illinois, Iowa, and Missouri. Sugar is produced at refineries on the eastern seaboard, in Louisiana, and in the far West. These refineries all compete in the Midwest where the distances from each area are approximately equal and maximum increases or hold-downs are required to preserve rate relationships. The same competitive situation does not exist on corn syrup since it is produced chiefly in the Midwest. The record indicates that even with the 6-percent increase on corn syrups, the actual increase in cents per pound on shipments to food processors would not exceed those on sugar from its producing areas.

The record supports the increases sought by the respondents. We therefore conclude that the proposed increases have been shown to be just and reasonable.

Corn starch is in competition with potato starch and wheat starch, and also with tapioca which moves almost 100 percent by motor carrier. About 1 billion pounds of starch is used annually in the manufacture of paper and allied products such as cardboard and corrugated board; and the textile industry also consumes many millions of pounds. The protestants contend that increases should not apply to the starch rates in western territory, including transcontinental territory, because the western railroads, in large part, have excluded grain and grain products from the application of the increases, and starch should be treated likewise. They also urge that, within eastern and southern

territories, maximum increases not exceeding 3 cents per 100 pounds be prescribed.

Considering the revenue needs of the respondents and the record presented here there is no sound basis for limiting the increases sought on corn starch. We conclude that the proposed increases on corn starch have been shown to be just and reasonable.

[757] *Fresh fruits and vegetables.*—Several associations of fruit and vegetable growers, individual growers, the state authorities mentioned previously, as well as various food retailers and processors, oppose the 5-percent increases sought on fresh fruits and vegetables.

The long-haul shippers from origins in California, Arizona, Texas, and the Pacific Northwest request hold-downs on increases from those origins. They claim that the flat increases proposed will result in higher increases per hundredweight on long-haul traffic from western origins to the benefit of growers in other areas, mainly in Florida. They contend that the present relationships between western origins and Florida origins will be distorted by the proposed increases.

The western growers of fruits and vegetables argue further that a flat *percentage increase* on fresh fruits and vegetables will cause serious diversion of this traffic from the railroads to competitive modes of transportation, and also that this type of increase will further widen the difference in rates between California long-haul traffic on these commodities, and traffic from Florida to the large eastern market cities, with a resultant loss of business to western growers of fresh fruits and vegetables. They contend that the need for the increases has not been shown and if any increases are allowed, a maximum hold-down should be

ordered, not only on per hundredweight rates but also on per-car rates.

The Western Growers Association points out that in 1966 on movements from California-Arizona origins of the nine largest moving vegetable and melon commodities to 41 American and 5 Canadian cities, the railroads hauled 57,411 carloads or 47 percent, while trucks handled 64,804 or 53 percent. In 1967 the figures were 52,031 or 44 percent by rail and 65,272 or 56 percent by truck, reflecting a decline by the railroads of 3 percent and 5,380 actual cars.

The Florida protestant associations of fruit and vegetable growers oppose the proposed increases on their commodities. Varying percentage increases are sought on the several types of commodities. For example a 5-percent increase is sought on fresh citrus fruits, except those moving on plan II TOFC. No increase is sought on fresh citrus fruits moving on plan II TOFC rates. Fresh vegetables except TOFC ramp to ramp take a 5-percent increase, while fresh vegetables TOFC, ramp to ramp take a 3-percent increase. Canned citrus products, [758] except TOFC ramp to ramp, take an increase of 6 percent while canned citrus products TOFC ramp to ramp take a 3-percent increase. Other similar claimed distortions of the rate structure occur on frozen and chilled citrus products, with some commodities at certain weights and to certain territories taking increases and some not.

The evidence indicates that the western growers, particularly from the California-Arizona area, dominate the eastern markets in many categories of fresh fruits and vegetables. Thus, the argument that hold-downs should be observed on such products from western origins in order to maintain the present rate relationships with movements of these products from Florida does not appear justified.

The percentage increases will not add a very significant increase in the present differential in rates between Florida and western origins. The evidence shows that the western producers of fresh fruits and vegetables will still be able to compete with growers in other regions and with home-grown products.

While the protestants generally argue that the increases sought will cause a diversion to motor carriers, with evidence being introduced as to the downward trend in carloadings from the west in 1967, after increases authorized in Ex Parte No. 256 went into effect, the record also shows that loads, for example, of vegetables and melons from California-Arizona origins moving by truck in 1967 also declined from the 1966 total. A decline in production and heavier loadings appear to be the cause of reduced carloading rather than increased rates.

The argument by Florida growers that increases should not be allowed on boxcar citrus rates because no increases were proposed on plan II TOFC citrus rates from Florida is not tenable since plan II rates have been increased 3 percent under Ex Parte No. 256, and later increased another 12 percent effective January 31, 1968.

The Florida growers assail the proposed increases on fresh fruits and vegetables and certain canned chilled and frozen citrus products, claiming that the rate adjustments on these products are complicated and should be examined in depth. The respondents have shown the competitive circumstances calling for the differences in proposed increases. For example, the 36,000-pound rates on frozen concentrates were not increased because of truck competitive influences and the 70,000-pound rates on frozen concentrates were excluded because of water [759] competitive

influences. The increases on fruits and vegetables are necessary if the railroads serving that territory are to receive sufficient compensation to enable them to maintain adequate service and to meet the increased costs.

In our judgment and taking into account the respondents' revenue needs, we find that the increases proposed on the commodities considered here under the heading fresh fruits and vegetables, are just and reasonable, and will not result in rates or charges in excess of a maximum reasonable level.

*Canned, packaged and frozen foodstuffs.*—The State authorities mentioned previously, associations of canners and freezers, retailers, and growers, oppose the 6-percent increase proposed on canned and frozen foodstuffs. They argue that with these increases the rail carriers will lose a large part of the increased traffic they have secured from these commodities since 1961 by the establishment of incentive rates, subject to minima of 100,000 pounds and higher.

The canners shipped over 16.7 million tons in 1965 and recognize that the railroads need some revenue relief, but not in the manner and extent sought here. Referring to proposed lesser increases of 5 percent on similar commodities such as fresh fruits and 4 percent on luxury articles such as cosmetics, for example, they claim that this disparate rate treatment constitutes preferential and prejudicial treatment for which no justification is shown. They contend also that the long-haul traffic is prejudiced by the proposed increases and that hold-downs should be applied on that traffic.

The respondents state that since 1947, canners have benefited from the establishment of low incentive rates, which have offset general rate increases over that period. They state that despite these lower freight rates, especially over the last 8 or 10 years, the market price of canned goods has

shown a continuing upward trend. They therefore believe that the canners have benefited from reduced freight rates and rising market prices for the period, and now should bear a fair share of the increases needed by the rail carriers. The respondents further believe that in view of the comparatively slight increase proposed here, and in light of the existing incentive rates, the possibility of diversion of traffic is minute.

The proposed increases in light of the evidence, and of respondents' revenue needs, in our judgment have been shown to be just and reasonable to the extent sought.

[760] *Wine.*—The Wine Institute opposes the 5-percent increase sought on wine. The principal volume of rail shipments of wine is from California to transcontinental territory. With the increase of 3 cents per 100 pounds authorized in Ex Parte No. 256, and the 5 percent sought here, protestants argue that the cost of rail movements from California to the principal eastern destinations will be increased within a year's period by 11 to 13 cents per 100 pounds. The increased transportation costs, the protestants contend, would depress further the already depressed state of the California wine industry, in competition with foreign and domestic wines, and could lead to a diversion of this traffic from rail to water which would be harmful to the railroads' own financial position.

The respondents show that the increases proposed, for example, to New York City, will only be 8 and 9 cents per 100 pounds, in packages, and in tank cars, respectively, amounting to ¾ cent per gallon. They also point out that while the number of wineries in California may have declined, production has increased from over 78.7 million gallons in 1963 to over 83.3 million gallons in 1967, and the

volume of wine transported to Atlantic coast destinations has also increased during this period.

The record shows the need for revenue increases by respondents, and the rate increases proposed have in our judgment been shown to be just and reasonable.

*Trees, nursery stock, plants, seeds, et cetera.*—The American Association of Nurserymen protests the 6-percent increase proposed on trees, shrubs, nursery stock, et cetera. It is asserted that the proposed increases are improper, arbitrary, and not justified; and that if any increase is allowed, it should be limited to a maximum of 4 percent. The Southern States Cooperative, Inc., opposes, among others, the increases on seed. It argues that any further increase in freight charges would subject the farming community to an even worse cost squeeze than it faces today.

The respondents contend that rates, for example, on seeds, have been reduced in the past, but that the preponderance of the traffic continues to move by unregulated motor carrier. They also contend that the increases are necessary in view of their revenue picture.

The evidence indicates in our judgment that the proposed increased rates on the concerned commodities are just and reasonable.

[761] *Walnuts.*—The Diamond Walnut Growers, Inc., protests the increases proposed on its products. About 41 percent of its products are shipped in the form of in-shell walnuts and 59 percent as shelled nutmeats. Walnuts in the shell are packed in burlap bags and load up to 70,000 pounds, or in 1-pound cellophane bags packed in cartons loading approximately 60,000 pounds per car. Shelled walnuts load approximately 65,000 pounds per car. Both shelled and in-shell walnuts are frequently loaded in the same car.

It is not disputed that traditionally in-shell and shelled walnuts have taken the same rates. The respondents propose to include shelled walnuts under the heading of confectionery or related products, which take a 6-percent increase, while on edible nuts in-shell a 5-percent increase is proposed. This results from the reclassification of nutmeats under the STCC groupings as a confectionery. It may be that there is justification for reclassifying nutmeats but on this record, evidence to this effect does not appear. The carriers concede that the question of reclassification could be given further study but that a revenue proceeding is not the place to deal with it. As we hold herein, it is similarly not the place to accomplish it.

While protestant also seeks hold-downs claiming the rates proposed discriminate against long-haul shippers, it appears that the increases do not change the alleged relationship with Georgia pecan growers to any material extent.

The increases proposed in our judgment appear just and reasonable except that the shelled and unshelled walnut rates should take the same increase of 5 percent.

*Cocoa beans.*—General Foods Corporation protests increases on loading charges and on line-haul rates on movements of import cocoa beans through Philadelphia, Pa., to Dover, Del. The loading charge increases are discussed under the section on accessorial charges. The 6-percent increase proposed in the line-haul rate appears fully justified in light of the respondents' revenue picture and in our judgment is just and reasonable.

*Livestock.*—The American National Cattlemen's Association and State affiliates oppose the 6-percent increases proposed on livestock. They argue that during the period 1947-66 there has been a decrease in volume of livestock traffic

so that, in 1966, rail revenue on this movement had declined to $29,200,918 or only 30.75 percent of that in 1946. They contend that since 1946 the rail livestock traffic has been substantially diverted to truck [762] movements, and that further diversion will result if the proposed increases herein are approved.

The respondents state that short-haul livestock traffic has been virtually completely diverted to motor carrier movements. The trend in the meatpacking industry has been to locate or relocate slaughter operations closer to the sources of livestock. This has had the effect of increasing the potential of trucking operations. The decentralization of packing plants coupled with the establishment of feed yards near slaughter plants has had an effect of reducing transportation of cattle by rail and truck for substantial distances.

Long-haul movements of livestock are not as susceptible to motor carrier diversions and the rail carriers have retained the traffic at longer distances. We are not persuaded that the proposed increases will cause further diversion of this traffic. In our judgment the record supports a finding that the proposed increases are just and reasonable.

*Hides.*—The Tanners' Council of America, Inc., objects to the proposed 5-percent increase on hides and skins. While generally objecting to any rate increase on hides, the protestant also points out that the ratio of payments for rail freight to hide and skin commodity values is relatively high, as compared with the past. This is caused, however, not by the increases in rail freight rates, but by the tremendous increase in cattle slaughtered during the recent past. In our judgment the record supports a finding that the proposed increased rates are just and reasonable.

*Fresh meats and packinghouse products.*—The proposed increases on fresh meats and packinghouse products are 5 percent, except when rates are published in cents per 100 pounds of 80 cents or less, in which case the increase is 2 cents per 100 pounds. Several meatpackers and the Department of Agriculture oppose the increase. The protestants, among other points, state that no credible evidence was introduced by respondents to show the basis for the proposed increases. They believe also that a large part of the present traffic in these commodities would be diverted to motor common carrier and private carrier; that rail traffic has substantially declined in recent years and will continue to do so if the proposed increases become effective; that the proposed increases would cause a decline in meat consumption and that the 2-cent hold-down for rates of 80 cents or less results in undue preference and prejudice.

The respondents point out that the principal rail movement of fresh meats is from western trunkline territory to eastern [763] territory; that the preponderance of this movement is long-haul traffic; that the rates on these commodities have had numerous reductions in recent years; and that various incentive rates reflecting higher minimum weights have been established. They contend that if the proposed increases are permitted to become effective the resulting rates will still be well below maximum reasonable levels. The 2-cent limitation on rates of 80 cents or less is designed to preserve respondents' competitive relationship with motor carriers on short-haul traffic. The rail carriers do not believe the increases proposed would cause diversion of their existing traffic, but in any event would consider future adjustments and reductions where required.

The evidence indicates a need for the increased revenue to be secured from the proposed increases. Based on the average rate from western trunkline to eastern territory, the increase would be only 8 cents per 100 pounds on these products. Under all the circumstances shown, in our judgment the proposed increases on fresh meats and packinghouse products have been shown to be just and reasonable.

*Cheese.*—The Kraft Foods Division of National Dairy Products Corporation opposes the increase of 6 percent on cheese. It contends that since 1960, due to the relative rate stability, rail tonnage and revenue from cheese traffic have gained substantially. Carload minimum weights were increased in this period, which resulted in increased per-car revenue. From 1963 to 1967 Kraft has increased its tonnage shipped by rail more than 60 percent and there has been a steady gain in the proportion of Kraft Foods cheese tonnage shipped by rail, with resultant reduction in tonnage handled by private motor transport. Protestant argues that the proposed increases will cause diversion to private motor carriers.

While some diversion may result, with the incentive rates in effect, such diversion would not appear to be significant. The evidence indicates the proposed rate increases to be just and reasonable.

*Vegetable oils, lard, edible tallow, et cetera.*—The Institute of Shortening and Edible Oils, Inc., and Anderson, Clayton Co., protest the proposed increases on vegetable oils, shortenings, lard, and other animal fat products. On vegetable oils and commodities grouped therewith in item 685 of the master tariff, the proposed increase is 1 cent on rates not exceeding 20 cents per 100 pounds, 2 cents on rates exceeding 20 cents but not [764] exceeding 40 cents per

100 pounds, and 6 percent on rates exceeding 40 cents per 100 pounds. On lard and certain meat products grouped therewith in item 595 of the master tariff, the proposed increase is 2 cents on rates 80 cents or less per 100 pounds and 5 percent on rates over 80 cents per 100 pounds. The institute states that its members paid the railroads $67.1 million in freight charges in 1967, including about $4 million for transit and accessorial charges, and that the proposed increases will cost them another $3,850,000, including about $250,000 in increased transit and accessorial charges, which, they say, would unduly burden their industry. The protestants also argue that no studies were made prior to the setting of the separate rate increases on these commodities, that the respondents have not submitted the quantum of proof necessary to meet their burden, and that, even if a revenue need is found by the Commission, the increase for vegetable oils and related commodities in item 685 should not exceed the increase proposed for lard and related commodities in item 595.

The respondents contend that there has been an increase in the per capita consumption of these commodities and that the proposed increases would only be a small amount per pound. They point out that lower incentive rates have been published to help the vegetable oil shippers and to meet carrier competition. They further show that, while lard is grouped with certain packinghouse products for the purpose of the proposed increase, ordinarily lard does not move on packinghouse products rates but rather on a lower specific basis at the identical level with vegetable oil shortenings. Such lower rates are the result of motor carrier competition.

Respondents have shown the need for revenue increases and these commodities must bear their fair share of such

increases. However, in view of the competition between lard and vegetable oils, which is recognized in the underlying rate levels, we will not approve a higher rate increase for item 685 than for item 595. With the exception noted, the proposed increases have been shown to be just and reasonable.

*Wool.*—On animal fibers, including wool, the proposed increase is 6 percent. The National Wool Growers Association opposes the increase, citing the possibility of diversion to truck movement, the heavier loading of wool in contrast with past practices, and in the competition from synthetic fibers. It is contended that the increase is unreasonable when compared with the 3-percent [765] increase on synthetic fibers. The respondents point out that rates on wool are lower than those found maximum reasonable in *Wool and Mohair Rates*, 276 I.C.C. 259 (1949), increased to the Ex Parte No. 256 level, and that incentive rates are available from the major producing areas in the Southwest. Rates on synthetic fibers are at a higher level than those on wool, and the difference in the increases will reduce only slightly the advantage now held by wool. Thus, for a movement of 2,000 miles, at a minimum weight of 40,000 pounds, the wool rate would increase from 156 cents per hundredweight to 165 cents; while the synthetic fiber rate would increase from 192 cents per hundredweight to 198 cents. No reason appears why animal fibers should not bear the increase as proposed.

*Cotton.*—Rates on raw cotton are proposed to be increased by percentages which vary according to the tariff minimum to which the particular rates apply. Rates subject to a tariff minimum weight of 35,000 pounds or less are to be increased 6 percent; those subject to a

minimum over 35,000 pounds to and including 50,000 pounds are to be increased 5 percent; and those subject to minimum over 50,000 pounds are to be increased 4 percent. Protestants assert that diversion of traffic to trucks will result from the increases but the respondents point out that rail movement of cotton has been reasonably stable for several years, and that movement by exempt truckers has certain advantages in particular areas which railroads cannot meet. Elsewhere, the rail service, which includes transit privileges is more desirable and is expected to hold the usual share of the traffic.

In 1967, about 95 percent of the cotton consumption was in Southeastern States, but some 85 percent of the production was in States in the Mississippi Delta area, the Southwest and on the Pacific coast. Rates on cotton to the Southeast have been held at a low level as the result of a series of reductions. In 1955 the rates from the Mississippi Valley area were reduced about 15 percent and since then, except for Ex Parte No. 223, no subsequent general increases have been applied. Generally these rates are lower today than those in effect in 1949 after the application of the Ex Parte No. 168 increase. Rates from the Southwest were reduced in 1956 by removal of the Ex Parte No. 175 increase plus 2 cents. The transcontinental 50,000-pound rate was reduced by 17 cents in 1956; and, in 1966, reduced rates at higher minima were established from the west coast.

The protestants also contend that the increase of 4 to 6 percent on cotton is unjust when compared with the increase of 3 percent [766] applied to synthetic fibers. Synthetic fibers increased their share of the total fiber market from 21.7 percent in 1950 to 45.6 percent in 1967,

during which period cotton's share declined from 68.8 percent to 49.2 percent. The respondents point out, however, that the annual consumption of cotton fibers has remained relatively stable, and that the increased use of synthetics is the result of consumer desires for blended fabrics, rather than relative transportation costs. The 5-percent increase results in increases of 4/100ths cent per pound to 6/100ths cent per pound on movements from Memphis, Tenn., and Lubbock, Tex., to Greenville, S. C. As noted in our discussion of rates on wool, rates on synthetic fibers are generally higher and the impact of the difference in increases will be to reduce somewhat the advantage of the cotton rates. The respondents point out that cotton moves for much longer distances than synthetics generally and on rates based on large groupings of origins and destinations rather than on mileage rates, which apply to synthetics. The difference in increase between these commodities cannot be found to violate the Interstate Commerce Act, and no reason appears why the proposed increases on cotton should be denied.

*Hay and straw.*—The National Hay Association, the New York State Hay and Grain Dealers Association, the United States Department of Agriculture, the New York State Department of Agriculture, Southern States Cooperative, Inc., and N. E. Lohr of Madison County, Va., protest the proposed 8-percent increase on hay and straw. They contend that the movement of hay is an essential segment of commerce, particularly during periods of drought, that the rate level on hay with the proposed increases is completely disproportionate to its value and is high compared with other commodities, that the rail rates on hay are fully compensatory without the increases, and that the railroads have an obligation to furnish equipment for the movement of

hay which they should not be permitted to evade by setting prohibitively high rates.

The rail respondents claim that little total hay production of the United States moves in interstate rail service, since most of it is either consumed on the farm or moved in short-haul unregulated motor carriage. Out of a total annual hay production of over 120 million tons, the railroads generally transport less than 200,000 tons. And since only about 15 percent of the total hay production tons enters commerce, the respondents argue that they are a minor factor in the handling of hay.

[767] The cost presentations of the parties do not clearly indicate the level of compensativeness of the rates on hay; but the evidence does indicate that, although hay and straw are low-grade commodities, they can bear a greater share of the revenue needs of the respondents than they are at present. While the 8-percent increase is higher than most of the proposed increases on agricultural commodities, it is not an unreasonable increase. Moreover, in periods of drought, we customarily authorize the establishment of substantially reduced rates pursuant to section 22(1) of the act. On all the evidence of record and in light of the respondents' revenue needs, we find the proposed rate increases on hay and straw to be just and reasonable.

*Lumber and forest products.*—On lumber and other forest products, the respondents propose an increase of 5 percent. Western producers urge that, if the increase is allowed, it be subject to a maximum of 2½ cents per hundredweight. Of particular concern to these producers is the competition of lumber from southern origins in the eastern and middle-western markets. To meet delivered prices, producers with higher transportation charges must absorb some portion

thereof. Application of the percentage increase to the higher rates for the longer hauls from western origins tends to increase the spread between total freight charges and enlarge the amounts which western producers must absorb. It is contended that the increases under Ex Parte No. 259 will result in appreciable reductions in eastbound movements of lumber and lumber products.

The respondents estimate that the proposed increase will produce some $31.8 million annually in increased revenues, and that the sought holddown of 2½ cents per hundredweight will reduce this to $15.2 million. Lumber, plywood, and forest products, in 1966, constituted 7.57 percent of the total revenues of class I railroads. The respondents point out that since 1946 rates on these commodities have been increased substantially less than on other commodities, that reduced incentive rates were published in 1961, and that, although no increase in rates occurred between 1960 and 1967, the wholesale price index of wood products rose 5 percent. It is estimated that the increase here proposed will result in an average increase of a little over 1 percent in delivered prices.

Lumber producers in the South enjoy lower rates due to their proximity to the eastern and middlewestern markets, and because of the availability of truck and water competition. Nonetheless, [768] although the spread in rates between the South and West has increased, the western producers continue to dominate the market. Between 1946 and 1967, softwood lumber production in the West rose from 14.4 billion to 20.9 billion board feet, while production in the South dropped from 9.4 billion to about 6.7 billion board feet. There has been a substantial increase in plywood production in the West in recent years. Generally,

throughout the East and central States, western production has accounted for one-half to two-thirds of the consumption of softwoods. We find that the differences resulting from the percentage increase on lumber and forest products as between these two producing areas are not unreasonable and that, in view of the importance of this traffic and the respondents' need for additional revenue, a holddown on the increase would not be proper. The increases are just and reasonable and are not discriminatory or unduly prejudical.

*Woodpulp.*—Importers of woodpulp oppose the 5 percent increase proposed on this commodity, asserting that railroads, at least in the East, do not provide heavy-loading incentive rates on import woodpulp, and referring to the reduction in tonnage imported from Scandinavia between 1959 and 1967. The respondents point out that loading of cars is done by the carriers or their agents, and that, due to a surplus of cars in the East, it is frequently more efficient to load two or more cars, rather than to load one more heavily. Woodpulp production in the United States has increased greatly in recent years, and it cannot be found that any decrease in import tonnage from particular foreign sources is related to railroad freight rates. We find the sought increase to be just and reasonable.

*Pulpwood, paper, and paper products.*—Proposed increases on pulpwood and wood chips, paper, and paper products, are similarly 5 percent. Protestants assert that heavier carloadings, increased volume, and reduced detention have so contributed to the carriers' revenues that the proposed increase should be denied. Cost evidence was offered which purported to show that the present rates exceeded full costs of the service. They were, however, based upon a number of studies whose reliability was

severely challenged. As we have heretofore observed, such a showing is of little probative value in a case of this type. The respondents point out that, notwithstanding the alleged competition from the plastics industry, paper manufacturers have increased gross sales by 100 percent since 1955 and enjoy a return of 9.8 percent. In the South, rates authorized in prior ex parte pro- [769] ceedings have not been taken in full in all cases, and reduced incentive rates have been published.

The protestants contend that paper and paper products are easily diverted to movement by truck, and that the proposed increase will have this result. The respondents show, however, that from 1957 to 1967, during which three general increases were published, rail participation in the movement of coarse paper, newsprint paper, and paperboard, fiberboard, and pulpboard increased appreciably. No reason is shown why these commodities should be exempted from the proposed increases.

*Scrap and waste materials.*—Rates on scrap and waste materials, which include such materials as waste paper and rags, textile wastes, scrap rubber, and scrap plastics, are proposed to be increased 5 percent. The National Association of Secondary Materials, Inc., representing over 600 members of the secondary materials industry and certain individual members of the association, oppose any increase in the rates on scrap and waste materials. The protestants assert that the industry generally does not have the power to control its prices, which are competitive with prices of virgin materials and other secondary materials. They assert that the industry is faced with the problem of mounting operating costs, particularly high labor costs, and increasing financial investments for materials handling

equipment and machinery to keep its plants in operation. At the same time it is a low net profit industry, many members of which operate at a net profit level of 2 percent or less. They generally forecast poor marketing conditions for the future. Protestants maintain that the industry does not have the ability or the flexibility to pass additional costs on to its consumers. Many smaller companies they assert, have had to cease operations because of ever-mounting costs. It is claimed that many shippers have invested in highway equipment which will tend to make diversion of traffic more permanent, that the railroads lost 15 percent of this business following the Ex Parte No. 256 increases, and that they will lose another 20 percent if the proposed increases are made. Protestants stress the favorable transportation characteristics of their traffic; heavy loading and heavy volume; regularity of movement; 2-way use of cars; ability to use standard (nonspecialized) equipment; no need for special services; and negligible loss and damage claims. They presented a comparison of rates on waste paper and rags at the Ex Parte No. 256 level with out-of-pocket and fully distributed costs, which indicates [770] generally that the present rates are compensatory. Protestants also contend that the proposed increases on their commodities are discriminatory because they are higher than the 3-percent increase proposed on allegedly competitive commodities, such as cotton linters pulp.

The respondents point out that the proposed 5-percent increase will apply uniformly in all territories and will preserve rather than reduce the marketing areas of these materials. Regarding the threat of diversion of this traffic to motor carriers, they observe that motor carrier operations are also experiencing increased costs, as is evident

by rate increases recently granted to the motor carriers. Respondents also point out that rail tonnage of scrap paper and rags increased from 3.2 million tons in 1957 to 4.7 million tons in 1966, which refutes the protestants' claim that past increases in rates have caused a diversion of rail tonnage. A study made by respondents on textile waste, scrap and wastepaper, and rubber and plastic scrap indicates that their traffic has remained steady or increased slightly in the years 1964, 1965, and 1966. Comparable statistics are not available for 1967 because of discontinuance of our waybill studies.

The Index of Average Freight Rates on Railroad Carload Traffic, Statement RI-1, published by the Commission's Bureau of Economics, shows that the average freight rate on scrap paper and rags (based on 1950 index as 100) declined from 132 in 1957 to 108 in 1963. With the proposed increases in rates in southern territory, cotton waste materials will move on lower rates than those in effect prior to December 10, 1959, except that rates will be 2 cents per 100 pounds higher at 900 miles. Rates on rags, minimum 40,000 pounds, between points in southern territory, including the proposed increases will be lower than those in effect prior to August 10, 1959. Respondents urge that it has been their policy to make rate adjustments wherever possible to prevent a loss of traffic to the railroads and that they will continue to do so. As an example, reduced rates on synthetic fiber waste within southern territory, minimum weights 60,000 and 100,000 pounds, were published and became effective August 10, 1968. The respondents realize that these materials require no special equipment and cannot stand excessive rates. They contend,

however, that railroad costs of operations are not confined to particular equipment, that even ordinary equipment, which is much in demand, represents a very substantial invest- [771] ment by the railroads, and that such equipment is not insulated from increases in cost.

In a proceeding of this nature, to the extent practicable, all rates and charges should bear a portion of the increased revenue needs of the railroads. Based on this record, we are not persuaded that the proposed increases in rates on scrap and waste materials will result in rates that exceed the maximum level of reasonableness or will create an undue burden on this traffic. Differences in increases on other commodities, alleged to be competitive, do not, without more, make the increases unlawful. We find the proposed increases on scrap and waste materials to be just and reasonable.

*Fertilizer.*—Proposed increases in rates on fertilizers are 3 percent, maximum 1 cent per 100 pounds, 20 cents per net ton, and 22 cents per gross ton. On superphosphate, the increase is 3 percent, maximum 5 cents per ton, net or gross, as rated. Increases on certain chemicals used in soil compounds are 5 percent, minimum 2 cents per 100 pounds. Rates on potash are to be increased 5 percent, subject to a limit of 53 cents per net ton from western territory to Florida and certain ports on the Gulf of Mexico.

Certain protestants have called attention to the fact that sundry components of fertilizers which have historically taken increases similar to fertilizers generally, have not been so treated in the X-259 master tariff. In reply, the railroads have expressed a willingness to revise the tariff as shown below so as to equalize these increases.

| STCC No. | Commodity | Present Tariff Item | New Tariff Item |
|---|---|---|---|
| 20-619-25 | Beet or cane residuum potassium (potash) | 520 | 605 |
| 20-713-17 | Cocoa bean shells | 580 | 605 |
| 20-939-60 | Castor pomace | 520 | 605 |
| 20-939-21 | Tung nut meal | 520 | 605 |
| 28-123-36 | Sodium (soda) nitrate (chile saltpeter) | 730 | 605 |
| 28-126-35 | Calcium cyanamid | 730 | 605 |
| 28-126-39 | Calcium nitrate (lime nitrate) | 730 | 605 |
| 28-191-10 | Ammoniacal liquor or aqua ammonia, nec. | 730 | 605 |
| 28-191-46 | Ammonium phosphate, nec also applies on diammonium phosphate | 730 | 605 |
| 28-191-49 | Ammonium phosphate, monobasic, crude | 730 | 605 |
| 28-191-55 | Ammonium sulphate | 730 | 605 |
| 28-191-58 | Ammonium sulphate nitrate (leuna saltpeter) | 730 | 605 |

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| STCC No. | Commodity | Present Tariff Item | New Tariff Item |
|---|---|---|---|
| 28-195-30 | Ferrous sulphate | 730 | 605 |
| 28-195-52 | Ferrous ammonium sulphate, fert. grade | 730 | 605 |
| 28-199-24 | Sodium and potassium nitrate | 730 | 605 |
| 28-199-71 | Soil compounds consisting of more than one of the following: chlorides, limes, magnesia, manganese, phosphates, carbonates, iron oxide, potash, silicates, sulphates | 730 | 605 |
| 40-291-27 | Sludge, sewage, dry, fertilizer material (Nec-not elsewhere classified). | 900 | 605 |

The respondents will be expected to make these revisions promptly.

The National Plant Food Institute and various producers of potash oppose the different treatment given this commodity. Potash is one of the three basic materials used in the manufacture of fertilizer. In the United States it is produced in New Mexico, Utah, and California, with New Mexico accounting for over 90 percent of the production. It is a low value and heavy loading commodity which, due to the location of the mines, moves almost exclusively by rail and in long-haul movements. About 23 percent of the domestic production is used directly as a fertilizer and about 72 percent is used in combination with other chemicals to manufacture mixed fertilizers. In Ex Parte No. 256 we concluded that the general information submitted with respect to potash did not establish that it should be excluded from the general increase in freight rates. On the other hand, our findings in that case also make it clear that no distinction was to be made between potash and other fertilizer materials in applying the increase. No justification has been given in this proceeding for the substantially higher rate increases sought to be assessed on potash than on other comparable fertilizers or fertilizer ingredients. No reason is given why potash should not be accorded the same consideration as has been given to other fertilizer ingredients which the respondents have agreed to include in master tariff item 605. We find that the application of a higher percentage increase on potash than on other fertilizers and fertilizer ingredients is unjust and unreasonable and that the increase on this commodity should not exceed 3 percent.

With the tariff revisions mentioned above, the fertilizer group increases are at the lowest level of all proposed in-

creases. Rates on fertilizers are below prescribed levels, and revenues per ton-[773]mile are the lowest since prior to 1950 on a nationwide basis. It is contended that all fertilizers should be held to the same increase as superphosphate. The limitation of 5 cents per ton on this item, however, reflects the extensive water competition from Florida origins which does not exist with respect to fertilizers generally. The record fails to show that this traffic should not bear some part of the additional revenue requirements of the respondents; and, except as above noted, the proposed increases are approved.

*Phosphate Rock.*—The increase of 5 percent, maximum 15 cents per net ton or 17 cents per gross ton, is objected to on the grounds that it will have an adverse effect on the fertilizer industry and will impose an additional cost on the farmer which could inflict immediate harm on the American Farm economy. It is claimed that phosphate rock is being asked to bear a disproportionate share of the general increase. The price of phosphate rock has been increased 30 to 50 percent during the period from 1956 to 1968. Yet, the present rates thereon are in many instances less than those in effect on June 1, 1956. In the circumstances we are convinced that the increase proposed is just and reasonable.

*Construction aggregates, sand, lime and limestone.*—The proposed increase on sand, gravel, crushed stone, cinders, slag, shale, limestone (except furnace limestone), and similar commodities is 6 percent, minimum 10 cents per net ton and 11 cents per gross ton, except in and to the South. To and within the South the increase, on rates not exceeding 100 cents per ton, net or gross as rated, is 15 cents per net ton or 16½ cents per gross ton; on rates over 100 cents and not over 200 cents per ton, the increase is 20 cents per net ton or 22 cents per gross ton; and, on rates over 200 cents

per ton, the increase is 25 cents per net ton or 27½ cents per gross ton. Like increases are proposed on brick or tile raw materials and crude shale. Rates on fluxing stone and furnace limestone are proposed to be increased 6 percent, maximum 15 cents per ton, net or gross, as rated. A flat 5-percent increase is proposed for shells, (oyster, crab, clam, et cetera). Rates on native asphalt or bitumens (asphaltic limestone) are proposed to be increased 6 percent.

The National Crushed Stone Association and numerous producers and users of these commodities object to the proposed increases and call attention to the greatly reduced participation of the railroads in the movement of this traffic, which they attribute to rates which have encouraged truck and water competition. [774] Demand for low-value construction aggregates is said to be highly elastic wherever the delivered rail price exceeds the delivered truck price from local origins. Rail shippers of these commodities contend that the proposed increases will have the inevitable result of contracting their marketing radius, with consequent loss of sales and diversion of more tonnage from rail to truck movement. A net loss rather than increase in railroad revenue is predicted. It is pointed out that the minimum increase of 10 cents per net ton results in percentage increases of as much as 20 percent in the lower rate brackets, and that the freight charges frequently exceed the f.o.b. price of the aggregate. U.S. Bureau of Mines statistics for crushed stone, other than stone used in the manufacture of cement and lime, indicate that between 1947 and 1967, production more than tripled while the percent of production moved by rail decreased from 36 percent to 13.3 percent. The protestants attribute this diversion to the increases in freight rates, and assert that the proposal in issue will have the same consequences.

One producer of crushed stone which sells its products in interstate commerce asks that we not permit the increase on interstate traffic until appropriate State regulatory bodies authorize the same increase on the intrastate movements employed by competing producers. In light of the clear showing here of revenue need we do not consider the imposition of such qualifications to be warranted in any orders to be issued in this case.

Construction aggregates have favorable loading characteristics but, as pointed out by the respondents, move, on the average, over short distances. Prior general increases in many instances, have not been taken on these items, or have been taken only partially. These factors combine to produce percentage increases which appear out of proportion when the minimum amounts are applied. It cannot be found, however, that the resulting rates are in excess of maximum reasonable rates. Whether the freight rates are the sole, or the primary cause of the reduction in rail movement is not certain. It appears undisputed that very small differences in delivered costs govern the source from which users procure these commodities; but the available statistics show substantial losses in rail movement during periods in which rail rates were not increased, and, in fact, during which competitive reductions were made. The respondents contend that the change in movement of the traffic arises out of the extensive development of sources of supply not located near rail [775] tracks, the expansion of highway building, dam construction, et cetera at points where rail delivery is not possible, and the development and use of portable plants at sources near points of use. It is also contended that truck rates have likewise risen and that the diversionary effect of the increases here proposed will be minimal.

Increases on lime, limestone, and limestone products are opposed by the National Limestone Institute, Inc., National Limestone Association, Glass Container Manufacturers Institute, Inc., American Glassware Association, various producers, steel manufacturers, sugar refiners, and others. Limestone is used as an aggregate in road building and construction materials, a fluxing material in the iron and steel industries, in the manufacture of fertilizers, the production of sundry chemicals, refining of sugar, et cetera. Contentions of protestants with respect to limestone are similar to those made with respect to aggregates generally. Oyster shells compete with limestone both as a construction aggregate and as a component of poultry feed. Shell producers contend that the combined effect of the increases in Ex Parte No. 256 and those proposed in this case is to disrupt competitive relationships and to discriminate against shells. The increases under consideration, however, are lower in certain instances on shells than on limestone.

On lime and lime plaster the proposed increases are 20 cents per net ton on rates not exceeding $6, and 4 percent on rates over $6 per net ton. It is contended that this prejudices producers of lime since the rates on the raw material, furnace limestone, are to be increased a maximum of 15 cents per net ton, thus encouraging users of lime to manufacture their own. The actual impact of this difference in rates is not apparent, however, since the 15-cent maximum applicable to furnace limestone is accompanied by a 6-percent increase in rates. As with industrial sand used in foundries, it is contended that lime used in water purification plants and paper manufacturing plants is now being reclaimed for further use, thus displacing possible shipments of new material. While cost factors would appear to be significant in a decision to embark upon a program of

reclaiming such materials, it does not appear that rail transportation charges have been a controlling factor. The development and use of alternative processes for manufacture of various commodities, such as the use of hydrocarbon processes in the production of acetylene, instead of lime, and the use of masonry cement in [776] place of masonry lime, appear to have little direct relation to the transportation costs of lime. In large part, the objections to increases on lime are directed to the failure to make similar increases on allegedly competitive products, particularly limestone. The extent to which these items are directly interchangeable in any particular use does not appear, however, and it cannot be said that the proposed increases actually produce any undue prejudice.

Steel producers oppose the increase on fluxing limestone, contending that this commodity, along with other steel industry raw materials, already contributes substantially and adequately to rail revenues. Lime producers also cite the prospect of construction of lime plants by steel producers to serve their own needs, thus eliminating movements from independent producers. As we observed in Ex Parte No. 256, lime can be used interchangeably with fluxing limestone in the manufacture of steel but the former is several times more valuable than the latter, which offsets the fact that smaller quantities need to be used. The respondents point out that the rates on lime and limestone are at a low level and have been the subject of numerous competitive reductions over the past years. The average rate per ton, U. S. to U. S., was $4.90 in 1965 compared to $6.20 in 1959. While the average load has increased, the average distance of haul and the average revenue per car have remained about the same. The respondents point out that lime plants built or acquired by steel producers have in some instances been

at substantial distance from the steel mills and still use rail movement. It is also shown that many lime plants located near steel mills have been those of independent producers.

The increases proposed on these commodities appear reasonable and no reason appears why they should be exempted from the general increase.

*Industrial sand.*—On industrial sand the proposed increase is 5 percent, minimum 10 cents per net ton or 11 cents per gross ton. Protestant producers of industrial sand and glass manufacturers assert that the increase is unjust and that diversion of the traffic to truck movement will result in net revenue losses to the railroads. The respondents point out that this commodity is of relatively high value, moves in closed cars or covered hopper cars having 100 percent empty return, and over long distances from a limited number of origins. The average rate per net ton declined between 1959 and 1965 from $3.72 to [777] $3.34, while between 1960 and 1966 the rail tonnage increased from about 18 million net tons to over 24 million net tons. We find the proposed increases on industrial sand just and reasonable.

*Cement.*—Rates on cement are proposed to be increased 2 cents per 100 pounds when in packages and 1 cent per 100 pounds in bulk, except that within and to the South the proposed increase on both bulk and package cement is 2½ cents per 100 pounds. In their brief, the respondents commit themselves to apply the proposed 2½ cent increase in the South on both package and bulk cement to the level of rates in effect prior to Ex Parte No. 256. The increases are opposed by the National Association of Cement Shippers and several cement manufacturers.

It is contended by protestants that the flat increases produce abnormal percentage increases when applied to the

shorter movements, that the increases will divert substantial traffic to truck movement and that the difference in treatment between package and bulk cement is unreasonable. It is also argued that market relationships of package cement will be disrupted since the increase of 2½ cents on shipments to the South must be added to the rates as already increased in Ex Parte No. 256, whereas package cement rates within the South were not increased in Ex Parte No. 256. The protestants assert that package cement moves in the oldest boxcar equipment, carrying the lowest per diem rates, in comparison to the more expensive hopper cars used for bulk movements.

In recent years cement manufacturers have made a substantial change in their methods of distribution. Instead of employing direct rail delivery to customers, volume movements of cement are now made to distribution terminals from which deliveries to customers are made by truck. Thus, Lehigh Portland Cement Company, which formerly moved some 95 percent of its production directly to customers by rail now delivers only 18 percent in this manner, but utilizes rail for the movement of about 42 percent of production to the distribution terminals. The protestants argue that higher rail rates may make it more economical to employ direct truck movements from plant to customer, with consequent loss of rail traffic to the distribution terminals.

It is also contended that the higher increase on package cement will disrupt existing relationships between the two methods of shipment. The respondents assert that package cement loads, on the average, to much lower weights than bulk cement and moves generally in different distribution channels. Rates in the South [778] and West are now higher on package cement than on bulk cement. Generally,

rates on cement are lower, even with the inclusion of the proposed increase, than prevailed in the early 1950's due to a number of reductions made between 1955 and 1965. The respondents contend that truck costs and rates have increased and that for the distances over which cement generally moves by rail, the rail rates will still be lower. While the flat increases produce percentage effects as high as 45 percent on movements under 30 miles, very little cement moves by rail for these distances. In 1965 only 3 percent of the interstate rail movement of cement was less than 50 miles and the average distances in the various territories were close to 200 miles. Minimum charges for carload service already exceed the charges based upon average loadings for distances under 50 miles and the proposed increases have little significance for such movements. It is pointed out that, although some older cement mills have been closed, they have been supplanted by new, modern facilities. Between 1956 and 1966, domestic shipments of cement increased 308 million to 380 million barrels.

In Ex Parte No. 256 we approved increases which ranged up to 3 cents per hundredweight and 60 cents per net ton. On rates over 10 cents and not over 30 cents per 100 pounds the authorized increase was 1 cent. This increase applied in most instances to the movements over 100 miles which constituted the preponderance of the traffic. In 1965, over 82 percent of interstate movements exceeded 100 miles. The increase now proposed on bulk cement, except in and to the South, is also 1 cent per 100 pounds. In the South, the application of the 2½ cent increase to the pre-X-256 rates on both package and bulk cement maintains the same relationships. The increase in other territories of 2 cents per 100 pounds on package cement, while higher than

that applied to bulk cement, does not result in unjust and unreasonable rates, and appears warranted by the differences in transportation characteristics. We find the increases proposed on cement, as set forth in the master increase tariff and modified by the commitment in the respondents' brief, are just and reasonable.

*Fly ash.*—Fly ash, a waste product produced by plants which burn coal, is used as an ingredient in making concrete. It competes with various other products for this purpose and less than 16 percent of that produced is so used, the rest being disposed of as a waste. The proposed increase in rates on fly ash is 6 percent, subject to minima and specific increases to and within the South as [779] set forth above for aggregates generally. The protestants compare this increase with the increase of 5 percent, maximum 15 cents per ton, which is proposed for the coal from which the fly ash is produced. They also point out that rates on coke breeze, a commodity physically resembling fly ash, is to receive the coal increase only. Fly ash is a low-value commodity with an average f.o.b. price on rail shipments of $1.50 per ton. On movements to the principal rail markets in the West and Southwest, the rail rates range from $7 to $13 per ton. We have heretofore found that transportation cost is usually the controlling factor in the disposal of fly ash. *Fly Ash, Chicago and Trenton, Mich., to Official Points*, 292 I.C.C. 349, 360; *Increased Freight Rates, 1967*, 332 I.C.C. 280, 328. The protestant urges that, if any increase is allowed on fly ash, it be restricted, in similar fashion as the coal increase, to a maximum of 15 cents per ton.

The respondents point out that fly ash competes with other aggregates and is to receive the same increase as

these products. Rates on this commodity are at a very low level, 9½ percent of first class, similar to cinders and industrial sand. In Ex Parte No. 256 we authorized a 5-percent increase on fly ash without limiting maxima. No reason is shown why this commodity should be exempted from the general increase, nor has it been shown that it should receive a holddown not applicable to other commodities with which it competes. Its value per ton, however, is less than one-third the value of the coal of which it is a waste product and in many instances, the proposed increase amounts to about 50 percent of the f.o.b. sales price. We find that the increase on fly ash should not exceed 3 percent over the basic rates.

*Compressed or liquified gas.*—Rates on butane, propane, and liquified petroleum gas are proposed to be increased 4 percent. Rates on liquified gases over other than butane, propane, and liquified petroleum gas are to be increased 6 percent. Rates on compressed or liquified industrial gases (except vinyl chloride), elemental gases, carbon dioxide, and acetylene are to be increased 8 percent. In the last group are included argon, helium, hydrogen, neon, oxygen, and fluoroethane gases, and various mixtures.

In recent years the use of oxygen has greatly increased, particularly in the steel industry. In 1956, 2.5 million tons were used, of which the steel industry used 1.1 million tons. In 1966, the total had increased to 11.7 million tons, of which steel plants used 7.1 million tons. The air-reduction method of producing this gas [780] makes it possible to locate plants without concern as to incoming raw materials, assuming the availability of a sufficient power supply. Thus, such plants frequently have been located close to substantial users, such as steel plants. In the air-reduction

process other gases, including nitrogen, argon, neon, and helium are produced at the same time.

Helium is also produced by the Bureau of Mines by extraction from natural gas and its primary user at present is the United States Government. It moves in tank cars as a gas, loading somewhat under 3,000 pounds per car, and moving under rates which provide for a minimum carload weight of 40,000 pounds. So handled, it can and does move substantial distances. This gas can also be liquified but since there is a practical limit of not over 48 hours in which it can be held in this state, movements as a liquid are confined to motor vehicle tank trucks and to distances limited by the time in transit. Possibilities of greatly increased commercial use of helium are indicated. Production and use of nitrogen and argon have also increased substantially in recent years.

It is contended that fluorocarbons compete with hydrocarbons such as butane and propane for use as dispersants and propellants; that prices of the former range from 19 cents to 57 cents per pound, whereas prices of the latter range from 5 to 8 cents per pound; and that an increase of 8 percent on the former while the latter are increased only 4 percent is unreasonable. The protestants fear increased use of the hydrocarbons in place of fluorocarbons if the rates on the latter, which are presently higher than those on hydrocarbons, are increased by the higher percentage. It appears, however, that the extent to which hydrocarbons are used in this competitive area is limited by certain inherent qualities, including odor, flammability, toxicity, lack of solubility, and thermal and chemical stability. It cannot be found that the alternative manufacturing possibilities of the hydrocarbons will be enhanced as a result of the pro-

posed rate increases or that fluorocarbons will be prejudiced thereby.

Generally, opponents of the rate increases cite the likelihood of diversion of the traffic to motor vehicle transportation. It is asserted that the increase may result in the conversion of the helium output of the Bureau of Mines to liquified gas and movement in tank trucks. Protestants also contend that the increases will engender development of new plants with local service provided by motor vehicle. At the same time, they assert that a continuing need for long-haul movement of liquid oxygen, nitrogen, and argon is to be [781] expected with a volume greater than in the past. The respondents point out that the overall rail movement of industrial gases has not decreased in recent years but that, notwithstanding various rate reductions at higher minima, the average loading per car has not increased. They attribute the failure of the railroads to increase their volume in relation to the increased output and use of compressed gases to the convenience and economics of decentralization, not to the rates for rail transportation. The protestants contend that many shippers supply their own cars for movement of these commodities and that claim ratios are favorable. The record fails to show any reason why compressed gases should not bear a proportion of the increased revenues of the railroads, nor can it be found that the rates as increased will be unlawful. While the increase of 8 percent is challenged as excessive in relation to the increases on other commodities, no substantial relationship was shown to exist, and no basis for a finding of undue discrimination, preference, or prejudice.

The protestants assert that, in the process of grouping commodities under the STCC code, certain liquid chemicals have been incorrectly assigned STCC numbers under the

generic heading of industrial gases. The record is inadequate to support definitive findings on this issue, but the respondents will be expected to take appropriate steps to ascertain and rectify any errors which are shown to have occurred.

*Liquified petroleum gas.*—Objections to the increase of 4 percent on liquified petroleum gas are substantially the same as were presented in Ex Parte No. 256. Attention is called to the industry's contribution of large tank cars and the prospect of diversion of traffic. The respondents point out that mileage allowances on private tank cars were increased in 1964 to compensate shippers for the new and larger equipment, and that incentive rates are published for the use of such cars. For a typical movement of 739 miles, the respondents point out that the proposed increase amounts to 7/10 of a mill per gallon. In southwestern and western trunkline territories, increases in 1965 were made on liquified petroleum gas to partially offset deficits due to the existing scale of rates applicable to that traffic. No persuasive reason appears why this commodity should be exempted from the general increase.

*Petroleum products.*—Rates on refined petroleum products in packages and in bulk are proposed to be increased 6 percent. Protestants object to the percentage application of the increase, asserting that it will disturb market relationships, and to the increase [782] on export movements. Increases in port charges due to increased costs, which do not apply on domestic traffic, provide no basis for exempting export traffic from bearing a share of general revenue increases along with all other traffic. Evidence as to market relationships and prospective diversion of traffic is not persuasive. The proposed increases appear reasonable, and necessary reductions to meet specific diversion situations

must be met by the respondents as they appear. Rates on petroleum wastes are to be increased 5 percent, minimum 2 cents per hundredweight. It is contended that these increases will result in diversion to barge transportation, or to elimination of movements which will no longer be economically feasible. While this a low-value commodity no basis appears for exempting it from the general increase.

*Chemicals.*—Rates on chemicals generally, soda ash, sulphate of ammonia, and vinyl chloride are also proposed to be increased 5 percent, with a minimum of 2 cents per hundred pounds. Rates on chlorine are to be increased 4 percent and on sulphuric acid and anhydrous ammonia, 3 percent, maximum 1 cent per hundredweight, 20 cents per net ton or 22 cents per gross ton.

Protestants assert that the proposed increases will result in diversion of traffic to motor and water transportation, and in the further development of decentralized manufacturing facilities. They introduced evidence to show that rates on chemicals are generally profitable to the respondents and constitute desirable traffic.

The respondents point out that no increase on chemical traffic to and within the South was taken in Ex Parte No. 256, other than on certain TOEC movements. They contend that the average increase on chemicals generally is less than 5 percent, that substantial numbers of requests for reductions in rates on chemicals are handled each year and that most are approved. Rates on movements in jumbo tank cars have been reduced below those for movements in standard tank cars.

The increases on a number of chemical items are challenged as discriminatory and disruptive of established rate relationships. Thus, on aqua ammonia (STCC 28-191-10),

an increase of 5 percent, minimum 2 cents per hundredweight, is proposed, while on anhydrous ammonia the proposed increase is 3 percent, maximum 20 cents per net ton. It is contended that, since the former is merely a water solution of the latter, it should take the same increase. It is contended that hydrochloric acid (STCC 28-1954-50) should not bear a greater increase than sulphuric acid (STCC 28-[783] 193-15). Similar objections are raised with respect to other materials. Differences in rates caused by the increases do not, standing alone, establish unlawful discrimination. In instances, however, where commodities have customarily been classified together for rate purposes, we do not consider a general rate increase proceeding an appropriate vehicle for altering such existing relationships. Thus, where the same rates have been applicable on items such as cleaning compounds and chlorinated hydrocarbons; or items such as calcium chloride, soda ash, and caustic soda, they should not be altered by the application of the proposed increases. The respondents will be expected to adjust their tariffs as necessary to apply increases on such of these items as have heretofore been rated alike so as to preserve their similar rate application.

Objection is made to the minimum increase of 2 cents per 100 pounds, provided for certain chemicals, including soda ash. It is contended that this results in discrimination against synthetically produced soda ash as compared with natural soda ash, since the former frequently moves over short distances and is thus affected by the minimum increase. Consequences of this nature, which are the product of marketing practices, do not render the rate increase unlawful. The increase applies to both types of soda ash.

As published, the master tariff X-259 applies higher increases to feed grade urea than to fertilizer grade urea.

The respondents have expressed a willingness to apply the lower fertilizer grade increase on feed grade urea. Similar corrective action will be taken on isobutane and in other comparable situations. Rates on commodities not assigned specific increases are generally increased 6 percent under item 100 of the master tariff. Shell Oil Company refers to a number of chemicals not listed in the Standard Transportation Commodity Code, which it contends should be grouped under particular numbers therein. Application of the 6-percent increase to these commodities is alleged to be discriminatory where competing products are assessed lesser increases under specific tariff provisions. The respondents will be expected to take prompt action to remedy all such omissions as well as others which are duly called to their attention.

*Salt.*—Respondents proposed to increase their rates on bulk salt by 5 percent, minimum 30 cents per net ton, except to and within the South, where the minimum increase proposed is 20 cents per net ton. On package salt, in all territories, flat increases in cents per 100 pounds are proposed. These amount to 5 cents on rates sub- [784] ject to minimum carload weights not exceeding 45,000 pounds; 4 cents on rates subject to minimum carload weights exceeding 45,000 pounds and not exceeding 60,000 pounds; and 3 cents on rates subject to minimum carload weights exceeding 60,000 pounds.

Protestants claim that the proposed increases are unreasonable because they are more drastic than the average 5 to 6 percent that the respondents are seeking generally; that in a general increase revenue proceeding there should be no distinction made between bulk and package salt; and that the different minimum increase proposed on bulk salt

to and within the South is unjustified. The salt industry is unanimous in claiming that we should grant the respondents only the lowest percentage increase consistent with their proven revenue needs, but in no event greater than 5 percent, maximum 2 cents per 100 pounds, or 40 cents per net ton, and that such increases should be uniform on all interstate and foreign commerce, both from a territorial standpoint and as between bulk salt and package salt.

Carload movements of salt within western territory east of the Continental Divide, southern territory, between those territories, and from official territory to western territory east of the Continental Divide and southern territory, is presently moved under multi-minima, incentive rates, commonly referred to as the "Banner Scales." These rates, initially established in 1962, apply on both package and bulk salt at minima of 45,000, 60,000, 80,000, and 120,000 pounds. While the rates prescribed in *Rate Structure Investigation, Part 13, Salt,* 197 I.C.C. 115 (1933) may still be used,[5] the incentive scales are moving the preponderance of the salt traffic.

Throughout the years the rates on salt have been given special treatment. For example, in the several general increase proceedings beginning with Ex Parte No. 175, *Increased Freight Rates, 1951,* 297 I.C.C. 17, and prior reports, to and including Ex Parte No. 212, *Increased Freight Rates, 1958,* 302 I.C.C. 665, while percentage increases varying from 3 to 15 percent were authorized generally, holddowns of 1½ cents to 3 cents per 100 pounds were imposed on both bulk and package salt. As recognized by us in *Increased Freight Rates, 1958,* 304 I.C.C. 289, 339,

5. Therein, different percentages of first-class rates were prescribed as maxima on bulk and package salt.

the special treatment given to the rates on salt has been a contributing factor [785] in keeping the rates on salt at a level lower than those on commodities generally.

Respondents here, under the form of a selective increase program, are attempting to maximize their revenues to the fullest extent possible without inviting traffic loss and without disrupting market relationships. The imposition of a minimum increase of only 20 cents per ton in the South was considered necessary because of barge competition. We have heretofore found in our interim report that the increases proposed by respondents will not exceed a maximum just and reasonable level of rates. Respondents claim that only through the use of the minimum on bulk salt and the flat increase on package salt can they receive a pro rata share of their costs from the salt industry. Despite contentions to the contrary, no good reasons have been offered for requiring the rates on bulk and package salt to be kept at the same level. In *Rate Structure Investigation, Part 13, Salt, supra,* the Commission prescribed different levels, based, among other things, on the facts that there was no competition between rock salt, which is predominantly shipped in bulk, and package salt; that each has differing transportation characteristics; and that package salt is of higher value. Protestants have not shown that these characteristics have changed. They claim that the low value of salt has definite limitations as to what the traffic will bear and that failure to provide maximum increases will hurt the smaller shippers of salt to the largest degree and encourage foreign competition. Respondents are ready and willing, voluntarily, to make competitive readjustments. Upon consideration of all the evidence, we are convinced that the rates on both bulk and package salt may be reasonably and

otherwise lawfully increased in the amounts proposed by respondents.

*Furniture.*—The respondents propose to increase the carload commodity rates on furniture on a sliding scale ranging from 4 to 7 percent.[6] General Services Administration, Westinghouse Electric Corporation, and a number of associations representing furniture manufacturers or dealers urge that the respondents have not justified the increases. They object to the different levels of increases, particularly the higher levels for longer hauls. They contend that the cost of moving furniture is also being increased [786] by more stringent packing requirements and increases in charges for accessorial services. The respondents point out that the lower increases would apply in the short-haul area where motor competition is greatest and that the proposed increases will restore rate relations existing prior to Ex Parte No. 223, resulting in a uniform 7½-percent increase over rates in effect prior to that increase. On articles of furniture weighing between 15 and 100 pounds the transcontinental increase would be between 7 and 46 cents, and for shipments hauled about 2,500 miles the increase would be about 2 cents per car-mile. They contend that risk of diversion is not great since motor carrier rates will be generally higher than the rail rates even with the increase applied. Furniture, it is noted, is high in value and subject to damage. No reason is shown why furniture should not provide a portion of the needed additional revenue. We find the proposed increases on furniture to be just and reasonable.

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6. On rates not exceeding 150 cents per 100 pounds the increase is 4 percent; on rates over 150 cents but not exceeding 200 cents per 100 pounds, 5 percent; on rates over 200 cents but not exceeding 400 cents per 100 pounds, 6 percent; and on rates over 400 cents per 100 pounds, 7 percent.

*Household appliances and lighting fixtures.*—Rates on these commodities are proposed to be increased 7 percent. Numerous manufacturers and associations of manufacturers oppose the increase, asserting that the traffic returns more than full cost to the railroads, and that diversion of traffic to private carriage is likely. Appliance manufacturers assert that they must compete with automobiles for consumer dollars, and point out that the increase on automobiles is 5 percent. Lighting fixture manufacturers assert that their product is a necessity of life and should be treated in the same fashion as drugs, window glass, soap, fresh vegetables, and canned foods. Neither of these contentions is responsive to the issues in this case. Respondents point out that the products involved are of high value and the loss and damage claims bear a high ratio to gross revenue. The articles are often transported in specialized equipment and the involved industries are shown by the evidence to have rates of return of about 13 percent. Prices charged by the household appliance industry were increased twice in 1967. No reason is shown why these commodities should not bear a portion of the needed additional revenues, nor is there shown any basis for a finding of unjust discrimination, or undue preference, or prejudice. We find the proposed increases on household and electrical appliances and fixtures just and reasonable.

*Transformers and turbines.*—Rates on electric transformers weighing 75,000 pounds or less which do not have dimensions requiring special type flatcars are proposed to be increased 4 per- [787] cent. On larger and heavier transformers, the proposed increase is 7 percent. On turbines the proposed increase is 6 percent. Various manufacturers, the National Electric Manufacturers Association and Gen-

eral Services Administration oppose the selective increases, contending that historically transformers and turbines have been given the same rate. They also assert that diversion of traffic to motor or water carriage is likely. Attention is also called to the 5-percent increase proposed for import shipments, asserting that domestic traffic will be prejudiced by the higher increases. Allis Chalmers Manufacturing Company estimates that it has lost 15 to 18 percent of its business to import competition and asserts that the increases will operate to the detriment of domestic shippers and aggravate the balance of payments problem. The respondents introduced evidence to show that only in a few instances are rates on imported transformers lower than domestic, and that the protestants enjoy the same import basis on their export shipments. There is no competitive relationship between transformers and turbines and no reason is shown why increases on these commodities should be related. The higher increase on heavier transformers is needed to meet the particular costs of moving these articles, including special cars, circuitous routing, blockage of adjacent tracks, et cetera. We find the increases proposed on transformers and turbines just and reasonable.

*Glass and glass containers.*—Rates on glass and glass containers are proposed to be increased 4 percent. The American Glassware Association and Glass Manufacturers Institute, Inc., oppose the increase, contending that it will divert more traffic to trucks. The respondents have published numerous reduced rates on these commodities to meet competition and the average carload rates have trended downward. Production of glass and glassware increased substantially between 1960 and 1966, and the industry as a whole has had a favorable rate of growth. No reason is shown why these commodities should not bear a portion of

the needed additional revenue. We find the increase proposed on glass and glass containers just and reasonable.

*Metal and plastic containers.*—Rates on metal cans and plastic bottles are proposed to be increased 7 percent. The Can Manufacturers' Institute opposes the increase, as well as the increase of 6 percent on can ends and 5 percent, minimum 2 cents per hundredpounds, on tin plate. It seeks a limitation of 4 percent in the increase on cans, similar to that on glass containers, and a limitation on can ends and tin plate of either 4 percent or 5 per- [788] cent, comparable to cullet and silica sand used as raw materials in the manufacture of the glass containers. Protestants also object to the increase proposed on plastic containers because it exceeds that applied to glass containers, asserting that it will result in diversion of traffic to private and contract motor carriers and in decentralization of the plastic fabricating industry. As noted above, rates on glass containers are depressed by motor competition; and there is no rate relationship between metal and plastic containers and glass containers. Transportation characteristics differ considerably, tin containers loading less than half as heavily as glass containers. There has been a substantial growth in the production and use of both types of containers in recent years. Between 1964 and 1967 plastic bottle shipments increased 42 percent. Pressure packaging in metal containers increased over 15 percent in 1967. While there are areas of competition between these products, the respondents contend that the choice of consumers is dependent upon a number of factors and the impact of differences in freight rates is not of great significance. No reason is shown why these commodities should not bear a portion of the needed additional revenues nor why similar increases should be

applied to them or to the raw materials which enter into their manufacture. We find the proposed increases on metal and plastic containers just and reasonable.

*Chinaware and earthenware.*—Rates on these commodities are proposed to be increased 6 percent. Protestants oppose the increase contending that it should not exceed the 4-percent increase proposed on glassware. While these commodities have many similarities in transportation characteristics, the movement of glassware is many times greater than chinaware. In 1964 rates on china table articles were reduced from $1.22 per hundredweight minimum 24,000 pounds to 77 cents per hundredweight, minimum 40,000 pounds. On an average carload, the rate differences resulting from the proposed increases are little over $7. We find that the proposed increases on chinaware and earthenware are just and reasonable.

*Crude abrasives.*—Rates on crude abrasives, crude aluminum oxide and crude silicon carbide are proposed to be increased 6 percent. Norton Company opposes the increase to the extent that it exceeds the increases applicable to bauxite ore or calcined or hydrated alumina. Rates on the latter are proposed to be increased 15 cents per ton, net or gross, on rates not exceeding $6.50 per ton, and 25 cents per ton on rates in excess of $6.50 per ton. The [789] protestant seeks to retain the relationship asserted to exist between bauxite ore and the intermediate products, alumina and aluminum oxide. While such relationships have been retained at times in the past, in Ex Parte No. 212, rates on crude abrasives were increased less than on bauxite ore. There is a substantial difference in the values of crude aluminum oxide and crude silicon carbide on the one hand and calcined alumina and bauxite ore on the other. The former commodities are

valued in excess of $135 per ton, while calcined alumina is valued at about $65 per ton, and bauxite ore at less than $10 per ton. No reason is shown why these commodities should be required to take similar increases. We find the proposed increases on crude abrasives just and reasonable.

*Ground tripoli.*—This commodity is included in item 1005 of the master tariff X-259, which provides for an increase of 6 percent. Protestant Carborundum Company contends that it is an abrasive similar to those included in item 650 and the respondents agree. They have offered to make an appropriate amendment to the tariff so as to reflect the same increase on tripoli as is presently provided for on ground silica. As with other such revisions, hereinbefore mentioned, respondents will be expected to take appropriate action to correct the tariff.

*Miscellaneous commodities.*—A number of protestants, including Outboard Marine Corporation, The Boeing Company, Aerospace Industries Association of America, Inc., Cities Service Oil Company, FMC Corporation, Steel Shipping Container Institute, Hobby Industry Association of America, Toy Manufacturers of America, Inc., Bicycle Institute of America, and Automobile Manufacturers Association, Inc., oppose the increases on various commodities. These include sewing machines, snow blowers, outboard motor boats, aircraft, aircraft parts, cellulose film, power sprayers, metal barrels, kegs, drums, pails, toys, bicycles, motor vehicles, and motor vehicle parts. They contend that the increases will result in diversion of traffic and, in some instances, that the items now return revenues in excess of out-of-pocket or fully distributed costs. Considering the established need for additional carrier revenue, the contentions of the protestants provide no basis for a finding that

any of the commodities in issue should be exempted from bearing their share of the proposed increases.

We have heretofore admonished the respondents, in their use of the STCC publication in connection with tariff adjustments, to promptly correct all instances in which established competitive groupings of commodities have not been observed. Except where [790] specifically otherwise stated we find the proposed increases just and reasonable. Statements of parties not specifically referred to herein, and concerning commodities not specifically referred to, have been considered in rendering our decision on the proposed increases in freight rates. The findings herein cover all statements and commodities in issue in this proceeding. Requested findings and exceptions not specifically reflected in our findings or conclusions have been considered and found not justified.

The panel of cooperating State commissioners,[7] the Honorable Vernon B. Derrickson of Delaware, the Honorable Charles J. Fain of Missouri and the Honorable Ralph H. Wickberg of Idaho have fully cooperated with the Commission throughout this proceeding and have advised with us in reaching our conclusions. We are authorized to state that they are in substantial accord with this report. The Honorable Edward L. Mason of Florida also participated in the earlier stages of the proceeding but he did not seek reelection and his term expired before our conclusions were reached.

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7. This panel was selected and appointed by the National Association of (State) Regulatory Utility Commissioners, upon invitation by this Commission, at the outset of this proceeding and were designed to be representative geographically of the eastern, midwestern, western, and southern areas involved in this proceeding.

ULTIMATE CONCLUSIONS AND FINDINGS

Upon consideration of the entire record in this proceeding, we conclude and find:

1. There is a critical need on the part of the respondent railroads for additional revenue to offset, in part, the increased operating costs not heretofore considered by us in approving their freight rates and charges. The public interest and that of the national defense, in a sound, adequate, and efficient transportation system will be adversely affected unless the proposed increased interstate freight rates and charges, subject to the limitations and exceptions set forth below, are permitted to be continued or to be put into effect.

2. Without the additional revenue to be derived from the increased freight rates and charges authorized herein, the earnings of respondents would be insufficient to enable them, under honest, economical, and efficient management, to provide adequate and efficient railway transportation service consistent with the public interest and the national transportation policy.

[791] 3. Respondents may justly and reasonably be permitted to continue and to establish the increased interstate freight rates and charges approved in our interim report, except that in certain instances, for reasons stated in this report, different increases are shown to be just and reasonable, in which cases our prior ultimate findings are modified and the increases authorized are as set forth in findings 4 to 12, inclusive.

4. Respondents' basic freight rates and charges may be increased generally in accordance with the proposals as set

forth in Tariff of Increased Rates and Charges, X-259, issued March 11, 1968, as amended. By basic freight rates and charges are meant those in effect on June 23, 1968, whether established by order of the Commission or voluntary act of the petitioning carriers (including rates held under investigation and suspension orders). Basic freight rates and charges include also rates prescribed by outstanding order of the Commission when and as the rates therein prescribed become effective.

5. Minimum net line-haul revenue requirements for absorption of charges for switching at St. Louis, Mo., and East St. Louis, Ill., may be increased not more than 6 percent over those in effect on June 23, 1968.

6. On pig iron and iron and steel scrap, no greater percentage increase may be made in the basic rates than is made in the rates on iron ore in effect on the same date, nor shall the maximum increase per ton made on pig iron and iron and steel scrap exceed that made on iron ore.

7. On nonferrous scrap, the minimum increase in the basic rates shall not exceed 1 cent per 100 pounds, 20 cents per net ton, or 22 cents per gross ton.

8. On grain and grain products in the West, no greater percentage increase may be made in the basic rates for the initial rail movement from the country origin to the primary market than the lowest percentage increase made in the basic through rates from such country origin to a destination beyond such primary market.

9. On shelled walnuts the increase in the basic rates shall not exceed that applied to walnuts in the shell.

10. On vegetable oils and commodities grouped therewith in item 685, the increase in the basic rates shall not exceed that published for lard in item 595.

11. On potash, basic rates may be increased no more than 3 percent.

[792] 12. On fly ash, basic rates may be increased no more than 3 percent.

13. The increased freight rates and charges authorized herein will not exceed a maximum reasonable level, and the revenues derived therefrom will result in earnings and rates of return for the railways, as a whole and by the usual groupings, not in excess of that required to enable them to render adequate and efficient transportation at the lowest cost consistent with the furnishing of such service.

14. The increased freight rates and charges authorized herein will have no undue adverse effect on the movement of traffic by railway.

15. Our findings as to justness and reasonableness, which are based upon all of the evidence before us, including typical evidence as to rates and charges in and between all territories, will apply to the general bases of rates and charges, and will not preclude interested parties from bringing any maladjustments to our attention for correction. The increased freight rates and charges authorized herein are not considered as prescribed within the meaning of the decision in *Arizona Grocery Co.* v. *Atchison, T. & S. F. Ry. Co.*, 284 U. S. 370, and will, in all respects, be subject to complaint and investigation as provided by the act.

16. An appropriate order will be entered (1) requiring the cancellation of the schedules under investigation herein

found not justified, without prejudice to the establishment and maintenance of schedules in conformity with the findings herein, and (2) modifying all our outstanding orders to the extent necessary to permit the maintenance of the increased freight rates and charges herein authorized, and granting relief from the provisions of section 4 of the act and our tariff publishing rules as may be necessary, including authority to publish and file tariff changes on not less than 5 days' notice.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 9th day of January 1969.

Ex Parte No. 259

INCREASED FREIGHT RATES, 1968

The Commission having this day made a report on further investigation containing its findings of fact and conclusions thereon, which report, and its prior [795] report and order of November 25, 1968, 332 I.C.C. 590, are hereby referred to and made a part hereof:

*It is ordered*, That the respondent railroads insofar as they participate in the traffic and have increased their rates, charges and minimum revenue requirements, as authorized in the Commission's order of November 25, 1968, shall cease and desist on or before February 15, 1969, from collecting basic rates increased to a greater extent than found just and reasonable herein, and from requiring minimum line-haul revenues as prerequisite to absorption of switching charges increased to a greater extent than found just and reasonable herein;

*It is further ordered,* That the respondent railroads be, and they are hereby, required to cancel the schedules suspended and placed under investigation by the order of June 19, 1968, to the extent not approved herein, on or before February 15, 1969, upon not less than 5 days' notice to the Commission and the general public by filing and posting in the manner prescribed by the Commission under the Interstate Commerce Act, without prejudice to the establishment and maintenance of schedules in conformity with the findings herein;

*It is further ordered,* That further changes in freight rates and charges, to the extent authorized herein, may be made effective upon not less than 5 days' notice to the Commission and to the general public by filing and posting in the manner prescribed in the act;

*It is further ordered,* That outstanding orders in other proceedings are hereby modified so as to permit establishment of the further changes in interstate freight rates and charges herein authorized;

*It is further ordered,* That all tariff schedules changing interstate rates or charges under the authority of this order, which rates and charges are now maintained or held in force by virtue of outstanding orders of the Commission, shall make specific reference to this order;

*And it is further ordered,* That the order entered herein on June 19, 1968, be, and it is hereby vacated and set aside; and that this proceeding be, and it is hereby, discontinued.

*I.C.C. Final Order*

SECOND SUPPLEMENTAL FOURTH SECTION ORDER NO. 20213

*It appearing,* That, the Commission, by fourth-section order No. 20213 entered June 19, 1968, as modified by supplemental fourth-section order No. 20213 entered November 25, 1968, authorized carriers parties to the proceeding, Ex Parte No. 259, *Increased Freight Rates, 1968,* 332 I.C.C. 590, to establish and maintain the increased rates and charges described therein without observing the provisions of section 4 of the Interstate Commerce Act;

*It further appearing,* That the Commission on this date has entered its further report in the same proceeding, authorizing certain increases and limiting other increases in rates and charges for the transportation of property over the lines of carriers parties to the proceeding within the United States, and that such increases or limitations cannot be published and made effective without producing in some instances rates or charges which yield greater compensation in the aggregate for the transportation of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, or greater compensation as a through rate or charge than the aggregate of intermediate rates or charges subject to the act, in contravention of section 4 [794] thereof; and that carriers parties to the proceeding have applied for relief from the provisions of section 4 to the extent necessary to establish the approved increased rates and charges, which fourth section order, as amended, prior orders in Ex Parte No. 259, the prior report, and the report of this date are hereby referred to and made a part hereof:

*It is ordered,* That fourth-section order No. 20213, entered, modified, and amended as aforestated, be, and it is

hereby, further modified and amended by adding the following ordering paragraphs thereto:

*It is further ordered,* That carriers subject to the Interstate Commerce Act and parties to said proceeding be, and they are hereby authorized to depart from the provisions of section 4 of the act to the extent necessary to establish and maintain the increases in rates and charges authorized in the order in Ex Parte No. 259 of this date, January 9, 1969.

*It is further ordered,* That carriers parties to said proceeding be, and they are hereby, authorized to establish and maintain rates and charges authorized in the order of this date, January 9, 1969, without observing the long-and-short-haul provision of section 4 of the act in cases arising out of the failure to apply the full increases in rates and charges over interstate routes between points in a single State, in turn caused by failure of the State authorities to authorize the full increases permitted in said proceeding.

*And it is further ordered,* That in those instances in which rates and charges in contravention of section 4 of the act are established under the authority contained herein, the schedules containing such rates and charges shall make reference to this order in the manner required by rule 28 of Tariff Circular No. 20.

*I.C.C. Final Order*

## AMENDMENT OF SPECIAL PERMISSION

## NO. 68-4000

## WAIVER OF TARIFF PUBLISHING RULES

*It appearing,* That on March 8, 1968, the Commission entered Special Permission No. 68-4000, amended June 19, 1968, authorizing carriers parties to the above proceeding to depart, to the extent specified in said special permission, from the Commission's tariff rules in publishing increases in freight rates and charges as provided for in such special permission, as amended.

*It is ordered,* That said special permission, as amended, be, and it is hereby further amended to permit the establishment, in the same manner and subject to the same limitations, including the expiration date, as therein provided, of the changed increases in freight rates and charges authorized by the Commission in its report and order of this date, January 9, 1969, in said proceeding.

By the Commission.

H. NEIL GARSON,
*Secretary.*

(SEAL)